

CHAPTER 40

Municipalities

The term 'Urban Local Government' in India signifies the governance of an urban area by the people through their elected representatives. The jurisdiction of an urban local government is limited to a specific urban area which is demarcated for this purpose by the state government¹.

There are eight types of urban local governments in India—municipal corporation, municipality, notified area committee, town area committee, cantonment board, township, port trust and special purpose agency.

The system of urban government was constitutionalised through the 74th Constitutional Amendment Act of 1992. At the Central level, the subject of 'urban local government' is dealt with by the following three ministries:

- (i) Ministry of Housing and Urban Affairs
- (ii) Ministry of Defence in the case of cantonment boards
- (iii) Ministry of Home Affairs in the case of Union Territories

EVOLUTION OF URBAN BODIES

Historical Perspective

The institutions of urban local government originated and developed in modern India during the period of British rule. The major events in this context are as follows:

- (i) In 1688, the first municipal corporation in India was set up at Madras. It must be noted here that a Charter for

the establishment of the Municipal Corporation of Madras was issued on 30th December 1687. However, the corporation came into existence on 29th September 1688.

- (ii) In 1726, the municipal corporations were set up in Bombay and Calcutta.
- (iii) Lord Mayo's Resolution of 1870 on financial decentralisation visualised the development of local self-government institutions.
- (iv) Lord Ripon's Resolution of 1882 has been hailed as the 'Magna Carta' of local self-government. He is called the father of local-self government in India.
- (v) The Royal Commission on decentralisation was appointed in 1907 and it submitted its report in 1909. Its chairman was C.E.H. Hobhouse.
- (vi) Under the dyarchical scheme introduced in Provinces by the Government of India Act of 1919, local self-government became a transferred subject under the charge of a responsible Indian minister.
- (vii) In 1924, the Cantonments Act was passed by the Central legislature.
- (viii) Under the provincial autonomy scheme introduced by the Government of India Act of 1935, local self-government was declared a provincial subject.

Committees and Commissions

The committees and commissions appointed by the Central Government to improve the

¹'Local Government' is a subject mentioned in the State List under the 7th Schedule of the Constitution.

Table 40.1 Committees and Commissions on Urban Local Governments

Sl. No.	Year	Name of the Committee / Commission	Chairman
1.	1949-51	Local Finance Enquiry Committee	P.K. Wattal
2.	1953-54	Taxation Enquiry Commission	John Matthai
3.	1963-65	Committee on the Training of Municipal Employees	Nur-Ud-din Ahmed
4.	1963-66	Rural-Urban Relationship Committee	A.P. Jain
5.	1963	Committee of Ministers on Augmentation of Financial Resources of Urban Local Bodies	Rafiq Zakaria
6.	1965-68	Committee on Service Conditions of Municipal Employees	B.S. Murthy
7.	1974	Committee on Budgetary Reform in Municipal Administration	Girijapati Mukharji
8.	1982	Study Group on Constitution, Powers and Laws of Urban Local Bodies and Municipal Corporations	K.N. Sahaya
9.	1985-88	National Commission on Urbanisation	C.M. Correa

functioning of urban local governments are mentioned in Table 40.1.

Constitutionalisation

Rajiv Gandhi Government In August 1989, the Rajiv Gandhi government introduced the 65th Constitutional Amendment Bill (i.e., Nagarpalika Bill) in the Lok Sabha. The bill aimed at strengthening and revamping the municipal bodies by conferring a constitutional status on them. Although the bill was passed in the Lok Sabha, it was defeated in the Rajya Sabha in October 1989 and hence, lapsed.

V. P. Singh Government The National Front Government under V P Singh introduced the revised Nagarpalika Bill in the Lok Sabha again in September 1990. However, the bill was not passed and finally lapsed due to the dissolution of the Lok Sabha.

Narasimha Rao Government P V Narasimha Rao Government also introduced the modified Municipalities Bill in the Lok Sabha in September 1991. It finally emerged as the 74th

Constitutional Amendment Act of 1992 and came into force on 1 June 1993².

74TH AMENDMENT ACT OF 1992

This Act has added a new Part IX-A to the Constitution of India. This part is entitled as 'The Municipalities' and consists of provisions from Articles 243-P to 243-ZG. In addition, the act has also added a new Twelfth Schedule to the Constitution. This schedule contains eighteen functional items of municipalities. It deals with Article 243-W.

The act gave constitutional status to the municipalities. It has brought them under the purview of justiciable part of the Constitution. In other words, state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act.

²The bill was passed in both the Lok Sabha and the Rajya Sabha in December 1992. After that, the bill was approved by the required number of state legislatures. It was assented by the President in April 1993.



The act aims at revitalising and strengthening the urban governments so that they function effectively as units of local government.

Salient Features

The salient features of the act are:

Three Types of Municipalities The act provides for the constitution of the following three types of municipalities in every state.

1. A *nagar panchayat* (by whatever name called) for a transitional area³.
2. A *municipal council* for a smaller urban area.
3. A *municipal corporation* for a larger urban area.

But, there is one exception. If there is an urban area where municipal services are being provided by an industrial establishment, then the governor may specify that area to be an industrial township. In such a case, a municipality may not be constituted.

The governor has to specify a transitional area, a smaller urban area or a larger urban area, keeping in view the following factors:

- (a) Population of the area.
- (b) Density of the population therein.
- (c) Revenue generated for local administration.
- (d) Percentage of employment in non-agricultural activities.
- (e) Economic importance.
- (f) Such other factors as he/she may deem fit.

Composition All the members of a municipality shall be elected directly by the people of the municipal area. For this purpose, each municipal area shall be divided into territorial constituencies to be known as wards. The state legislature may provide the manner of election of the chairperson of a municipality. It may also provide for the representation of the following persons in a municipality.

1. Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality.

2. The members of the Lok Sabha and the state legislative assembly representing constituencies that comprise wholly or partly the municipal area.
3. The members of the Rajya Sabha and the state legislative council registered as electors within the municipal area.
4. The chairpersons of committees (other than wards committees).

Wards Committees There shall be constituted a wards committee, consisting of one or more wards, within the territorial area of a municipality having population of three lakh or more. The state legislature may make provision with respect to the composition and the territorial area of a wards committee and the manner in which the seats in a wards committee shall be filled.

Other Committees In addition to the wards committees, the state legislature is also allowed to make any provision for the constitution of other committees. The chairpersons of such committees may be made members of the municipality.

Reservation of Seats The act provides for the reservation of seats for the scheduled castes and the scheduled tribes in every municipality in proportion of their population to the total population in the municipal area. Further, it provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for women belonging to the SCs and the STs).

The state legislature may provide for the manner of reservation of offices of chairpersons in the municipalities for SCs, STs and women. It may also make any provision for the reservation of seats in any municipality or offices of chairpersons in municipalities in favour of backward classes.

The reservation of seats as well as the reservation of offices of chairpersons in the municipalities for the scheduled castes and scheduled tribes shall cease to have effect after the expiration of the period specified in Article 334 (which is presently eighty years, that is, till 2030).

³A transitional area means an area which is in transition from a rural area to an urban area.



Duration of Municipalities The act provides for a five-year term of office for every municipality from the date of its first meeting. However, it can be dissolved before the completion of its term. Further, the fresh elections to constitute a municipality shall be completed (a) before the expiry of its duration of five years; or (b) in case of dissolution, before the expiry of a period of six months from the date of its dissolution.

But, where the remainder of the period (for which the dissolved municipality would have continued) is less than six months, it shall not be necessary to hold any election for constituting the new municipality for such period.

Moreover, a municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued had it not been so dissolved. In other words, a municipality reconstituted after premature dissolution does not enjoy the full period of five years but remains in office only for the remainder of the period.

The act also makes two more provisions with respect to dissolution: (a) a municipality must be given a reasonable opportunity of being heard before its dissolution; and (b) no amendment of any law for the time being in force shall cause dissolution of a municipality before the expiry of the five years term.

Disqualifications A person shall be disqualified for being chosen as or for being a member of a municipality if he/she is so disqualified (a) under any law for the time being in force for the purposes of elections to the legislature of the state concerned; or (b) under any law made by the state legislature. However, no person shall be disqualified on the ground that he/she is less than 25 years of age if he/she has attained the age of 21 years. Further, all questions of disqualifications shall be referred to such authority as the state legislature determines.

State Election Commission The superintendence, direction and control of the preparation

of electoral rolls and the conduct of all elections to the municipalities shall be vested in the state election commission.

The state legislature may make provision with respect to all matters relating to elections to the municipalities.

Powers and Functions The state legislature may endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government. Such a scheme may contain provisions for the devolution of powers and responsibilities upon municipalities at the appropriate level with respect to (a) the preparation of plans for economic development and social justice and (b) the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the eighteen matters listed in the Twelfth Schedule.

Finances The state legislature may (a) authorise a municipality to levy, collect and appropriate taxes, duties, tolls and fees; (b) assign to a municipality taxes, duties, tolls and fees levied and collected by state government; (c) provide for making grants-in-aid to the municipalities from the consolidated fund of the state; and (d) provide for constitution of funds for crediting all moneys of the municipalities.

Finance Commission The finance commission (which is constituted for the panchayats) shall also, for every five years, review the financial position of municipalities and make recommendations to the governor as to:

1. The principles that should govern:
 - (a) The distribution between the state and the municipalities of the net proceeds of the taxes, duties, tolls and fees levied by the state and allocation of shares amongst the municipalities at all levels.
 - (b) The determination of the taxes, duties, tolls and fees that may be assigned to the municipalities.
 - (c) The grants-in-aid to the municipalities from the consolidated fund of the state.



2. The measures needed to improve the financial position of the municipalities.
3. Any other matter referred to it by the governor in the interests of sound finance of municipalities.

The governor shall place the recommendations of the commission along with the action taken report before the state legislature.

The central finance commission shall also suggest the measures needed to augment the consolidated fund of a state to supplement the resources of the municipalities in the state (on the basis of the recommendations made by the finance commission of the state).

Audit of Accounts The state legislature may make provisions with respect to the maintenance of accounts by municipalities and the auditing of such accounts.

Application to Union Territories The provisions of this part are applicable to the Union territories. However, the President may direct that they would apply to a Union territory subject to such exceptions and modifications as he/she may specify.

In exercise of the above power, the President (in 2001) directed that the provisions of Article 243ZD (Committee for district planning) and 243ZE (Committee for metropolitan planning) shall not apply to the National Capital Territory of Delhi.

Exempted Areas The act does not apply to the scheduled areas and tribal areas in the states⁴. It shall also not affect the functions and powers of the Darjeeling Gorkha Hill Council of the West Bengal.

However, the Parliament may extend the provisions of this part to the scheduled areas

and tribal areas subject to such exceptions and modifications as it may specify.

District Planning Committee Every state shall constitute at the district level, a district planning committee to consolidate the plans prepared by panchayats and municipalities in the district, and to prepare a draft development plan for the district as a whole. The state legislature may make provisions with respect to the following:

1. The composition of such committees;
2. The manner of election of members of such committees;
3. The functions of such committees in relation to district planning; and
4. The manner of the election of the chairpersons of such committees.

The act lays down that four-fifths of the members of a district planning committee should be elected by the elected members of the district panchayat and municipalities in the district from amongst themselves. The representation of these members in the committee should be in proportion to the ratio between the rural and urban populations in the district.

In preparing the draft development plan, a district planning committee shall have regard to—

- (i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation and
- (ii) the extent and type of available resources whether financial or otherwise.

Further, the committee shall also consult such institutions and organisations as the Governor may specify.

The chairperson of a District Planning Committee shall forward the development plan to the state government.

Metropolitan Planning Committee Every metropolitan area shall have a metropolitan planning committee to prepare a draft

⁴At present, ten states of India have scheduled areas. These are: Andhra Pradesh, Telangana, Jharkhand, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa and Rajasthan. Presently, there are a total of ten tribal areas (autonomous districts) in the four states of Assam (3), Meghalaya (3), Tripura (1) and Mizoram (3).



development plan⁵. The state legislature may make provisions with respect to the following:

1. The composition of such committees;
2. The manner of election of members of such committees;
3. The representation in such committees of the Central government, state government and other organisations;
4. The functions of such committees in relation to planning and coordination for the metropolitan area; and
5. The manner of election of chairpersons of such committees.

The act lays down that two-thirds of the members of a metropolitan planning committee should be elected by the elected members of the municipalities and chairpersons of the panchayats in the metropolitan area from amongst themselves. The representation of these members in the committee should be in proportion to the ratio between the population of the municipalities and the panchayats in that metropolitan area.

In preparing the draft development plan, a metropolitan planning committee shall have regard to—

- (i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;
- (ii) matters of common interest between the Municipalities and the Panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;
- (iii) the overall objectives and priorities set by the Government of India and the government of the state and
- (iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise.

⁵Metropolitan area means an area having a population of 10 lakh or more, in one or more districts and consisting of two or more municipalities or panchayats or other contiguous areas.

Further, the committee shall also consult such institutions and organisations as the Governor may specify.

The chairperson of a Metropolitan Planning Committee shall forward the development plan to the state government.

Continuance of Existing Laws and Municipalities All the state laws relating to municipalities shall continue to be in force until the expiry of one year from the commencement of this act. In other words, the states have to adopt the new system of municipalities based on this act within the maximum period of one year from 1 June, 1993, which is the date of commencement of this act. However, all municipalities existing immediately before the commencement of this act shall continue till the expiry of their term, unless dissolved by the state legislature sooner.

Bar to Interference by Courts in Electoral Matters The act bars the interference by courts in the electoral matters of municipalities. It declares that the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies cannot be questioned in any court. It further lays down that no election to any municipality is to be questioned except by an election petition presented to such authority and in such manner as provided by the state legislature.

Twelfth Schedule It contains the following 18 functional items placed within the purview of municipalities:

1. Urban planning including town planning;
2. Regulation of land use and construction of buildings;
3. Planning for economic and social development;
4. Roads and bridges;
5. Water supply for domestic, industrial and commercial purposes;
6. Public health, sanitation, conservancy and solid waste management;
7. Fire services;
8. Urban forestry, protection of the environment and promotion of ecological aspects;

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded;
10. Slum improvement and upgradation;
11. Urban poverty alleviation;
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds;
13. Promotion of cultural, educational and aesthetic aspects;
14. Burials and burial grounds, cremations and cremation grounds and electric crematoriums;
15. Cattle ponds, prevention of cruelty to animals;
16. Vital statistics including registration of births and deaths;
17. Public amenities including street lighting, parking lots, bus stops and public conveniences; and
18. Regulation of slaughter houses and tanneries.

TYPES OF URBAN GOVERNMENTS

The following eight types of urban local bodies are created in India for the administration of urban areas:

- Municipal Corporation
- Municipality
- Notified Area Committee
- Town Area Committee
- Cantonment Board
- Township
- Port Trust
- Special Purpose Agency

1. Municipal Corporation

Municipal corporations are created for the administration of big cities like Delhi, Mumbai, Kolkata, Hyderabad, Bangalore and others. They are established in the states by the acts of the concerned state legislatures, and in the union territories by the acts of the Parliament of India. There may be one common act for all the municipal corporations in a state or a separate act for each municipal corporation.

A municipal corporation has three authorities, namely, the council, the standing committees and the commissioner.

The Council is the deliberative and legislative wing of the corporation. It consists of the Councillors directly elected by the people, as well as a few nominated persons having knowledge or experience of municipal administration. In brief, the composition of the Council including the reservation of seats for SCs, STs and women is governed by the 74th Constitutional Amendment Act.

The Council is headed by a Mayor. He/she is assisted by a Deputy Mayor. The mayor is elected in a majority of the states for a one-year renewable term. He/she is basically an ornamental figure and a formal head of the corporation. His/her main function is to preside over the meetings of the Council.

The standing committees are created to facilitate the working of the council, which is too large in size. They deal with public works, education, health, taxation, finance and so on. They take decisions in their fields.

The municipal commissioner is responsible for the implementation of the decisions taken by the council and its standing committees. Thus, he/she is the chief executive authority of the corporation. He/she is appointed by the state government and is generally a member of the IAS.

2. Municipality

The municipalities are established for the administration of towns and smaller cities. Like the corporations, they are also set up in the states by the acts of the concerned state legislatures and in the union territories by the acts of the Parliament of India. They are also known by various other names like municipal council, municipal committee, municipal board, borough municipality, city municipality and others.

Like a municipal corporation, a municipality also has three authorities, namely, the council, the standing committees and the chief executive officer.



The council is the deliberative and legislative wing of the municipality. It consists of the councillors directly elected by the people.

The council is headed by a president/chairman. He/she is assisted by a vice-president/vice-chairman. He/she presides over the meetings of the council. Unlike the Mayor of a municipal corporation, he/she plays a significant role and is the pivot of the municipal administration. Apart from presiding over the meetings of the Council, he/she enjoys executive powers.

The standing committees are created to facilitate the working of the council. They deal with public works, taxation, health, finance and so on.

The chief executive officer/chief municipal officer is responsible for day-to-day general administration of the municipality. He/she is appointed by the state government.

3. | Notified Area Committee

A notified area committee is created for the administration of two types of areas—a fast developing town due to industrialisation, and a town which does not yet fulfil all the conditions necessary for the constitution of a municipality, but which otherwise is considered important by the state government. Since it is established by a notification in the government gazette, it is called as notified area committee. Though it functions within the framework of the State Municipal Act, only those provisions of the act apply to it which are notified in the government gazette by which it is created. It may also be entrusted to exercise powers under any other act. Its powers are almost equivalent to those of a municipality. But unlike the municipality, it is an entirely nominated body, that is, all the members of a notified area committee including the chairman are nominated by the state government. Thus, it is neither an elected body nor a statutory body.

4. | Town Area Committee

A town area committee is set up for the administration of a small town. It is a semi-municipal authority and is entrusted with a limited number of civic functions like drainage, roads, street lighting and conservancy. It is created by a

separate act of a state legislature. Its composition, functions and other matters are governed by the act. It may be wholly elected or wholly nominated by the state government or partly elected and partly nominated⁶.

5. | Cantonment Board

A cantonment board is established for municipal administration for civilian population in the cantonment area⁷. It is set up under the provisions of the Cantonments Act of 2006—a legislation enacted by the Central government. It works under the administrative control of the defence ministry of the Central government. Thus, unlike the above four types of urban local bodies, which are created and administered by the state government, a cantonment board is created as well as administered by the Central government.

The Cantonments Act of 2006 was enacted to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratisation, improvement of their financial base to make provisions for developmental activities and for matters connected with them. This Act has repealed the Cantonments Act of 1924.

At present, there are 62 cantonment boards in the country. They are grouped into four categories on the basis of the civil population. This is shown in Table 40.2.

Table 40.2 Classification of Cantonment Boards

Category	Civil Population
I	Above 50,000
II	10,000 to 50,000
III	2,500 to 10,000
IV	Below 2,500

⁶The Rural-Urban Relationship Committee (1963–66) headed by A.P. Jain recommended that small town area committees should be merged with the panchayati raj institutions to avoid multiplicity in the pattern of local bodies.

⁷A cantonment area is a delimited area where the military forces and troops are permanently stationed.



A cantonment board consists of partly elected and partly nominated members. The elected members hold office for a term of five years while the nominated members (i.e., ex-officio members) continue so long as they hold the office in that station. The military officer commanding the station is the ex-officio president of the board and presides over its meetings. The vice-president of the board is elected by the elected members from amongst themselves for a term of five years.

The Category I cantonment board consists of the following members:

- (i) A military officer commanding the station
- (ii) An executive engineer in the cantonment
- (iii) A health officer in the cantonment
- (iv) A first class magistrate nominated by the district magistrate
- (v) Three military officers nominated by the officer commanding the station
- (vi) Eight members elected by the people of the cantonment area
- (vii) Chief Executive Officer of the cantonment board

The functions performed by a cantonment board are similar to those of a municipality. These are statutorily categorised into obligatory functions and discretionary functions. The sources of income includes both, tax revenue and non-tax revenue.

The executive officer of the cantonment board is appointed by the President of India. He/she implements all the resolutions and decisions of the board and its committees. He/she belongs to the central cadre established for the purpose.

6. | Township

This type of urban government is established by the large public enterprises to provide civic amenities to its staff and workers who live in the housing colonies built near the plant. The enterprise appoints a town administrator to look after the administration of the township. He/she is assisted by

some engineers and other technical and non-technical staff. Thus, the township form of urban government has no elected members. In fact, it is an extension of the bureaucratic structure of the enterprise.

7. | Port Trust

The port trusts are established in the port areas like Mumbai, Kolkata, Chennai and so on for two purposes: (a) to manage and protect the ports; and (b) to provide civic amenities. A port trust is created by an Act of Parliament. It consists of both elected and nominated members. Its chairman is an official. Its civic functions are more or less similar to those of a municipality.

8. | Special Purpose Agency

In addition to these seven area-based urban bodies (or multipurpose agencies), the states have set up certain agencies to undertake designated activities or specific functions that 'legitimately' belong to the domain of municipal corporations or municipalities or other local urban governments. In other words, these are function-based and not area-based. They are known as 'single purpose', 'uni-purpose' or 'special purpose' agencies or 'functional local bodies'. Some such bodies are:

1. Town improvement trusts.
2. Urban development authorities.
3. Water supply and sewerage boards.
4. Housing boards.
5. Pollution control boards.
6. Electricity supply boards.
7. City transport boards.

These functional local bodies are established as statutory bodies by an act of state legislature or as departments by an executive resolution. They function as autonomous bodies and deal with the functions allotted to them independently of the local urban governments, that is, municipal corporations or municipalities and so forth. Thus, they are not subordinate agencies of the local municipal bodies.

MUNICIPAL PERSONNEL

There are three types of municipal personnel systems in India. The personnel working in the urban governments may belong to any one or all the three types. These are

1. Separate Personnel System: Under this system, each local body appoints, administers, and controls its own personnel. They are not transferable to other local bodies. It is the most widely prevalent system. This system upholds the principle of local autonomy and promotes undivided loyalty.

2. Unified Personnel System: In this system, the state government appoints, administers, and controls the municipal personnel. In other words, state-wide services (cadres) are created for all the urban bodies in the state. They are transferable between the local bodies in the state. This system is prevalent in Andhra Pradesh, Tamil Nadu, Uttar Pradesh, Rajasthan, Madhya Pradesh and so on.

3. Integrated Personnel System: Under this system, the personnel of the state government and those of the local bodies form part of the same service. In other words, the municipal personnel are the members of the state services. They are transferable not only between the local bodies in the state but also between local bodies and departments of state government. Thus, there is no distinction between local civil service and state civil service. This system is prevalent in Odisha, Bihar, Karnataka, Punjab, Haryana and others.

The various national level institutions providing training to the municipal personnel are

1. All-India Institute of Local Self-Government (Mumbai) constituted in 1927; it is a private registered society
2. Centre for Urban and Environmental Studies (New Delhi) set up in 1967 on the recommendation of Nur-ud-din Ahmed Committee on Training of Municipal Employees (1963-1965)
3. Regional Centres for Urban and Environmental Studies (Kolkata, Lucknow,

Hyderabad and Mumbai) set up in 1968 on the recommendation of Nur-ud-din Ahmed Committee on Training of Municipal Employees (1963-1965)

4. National Institute of Urban Affairs (New Delhi), established in 1976
5. Human Settlement Management Institute (New Delhi), established in 1985

MUNICIPAL REVENUE

There are five sources of income of the urban local bodies. These are as follows:

1. **Tax Revenue:** The revenue from the local taxes include property tax, entertainment tax, taxes on advertisements, professional tax, water tax, tax on animals, lighting tax, pilgrim tax, market tax, toll on new bridges and so on. In addition, the municipal bodies impose various cesses like library cess, education cess, beggary cess and so on. Property tax is the most important tax revenue.
2. **Non-Tax Revenue:** This source includes rent on municipal properties, fees and fines, royalty, profits and dividends, interest, user charges and miscellaneous receipts. The user charges (i.e., payment for public utilities) include water charges, sanitation charges, sewerage charges and so on.
3. **Grants:** These include the various grants given to municipal bodies by the Central and State Governments for several development programmes, infrastructure schemes, urban reform initiatives and so on.
4. **Devolution:** This consists of the transfer of funds to the urban local bodies from the state government. This devolution is made on the basis of the recommendations of the state finance commission.
5. **Loans:** The urban local bodies raise loans from the state government as well as financial institutions to meet their capital expenditure. They can borrow from the financial institutions or other bodies only with the approval of the state government.

CENTRAL COUNCIL OF LOCAL GOVERNMENT

The Central Council of Local Government was set up in 1954. It was constituted under Article 263 of the Constitution of India by an order of the President of India. Originally, it was known as the Central Council of Local Self-Government. However, the term 'self-government' was found to be superfluous and hence was replaced by the term 'government' in the 1980s. Till 1958, it dealt with both urban as well as rural local governments, but after 1958 it has been dealing with matters of urban local government only.

The Council is an advisory body. It consists of the Minister for Housing and Urban Affairs

in the Government of India and the ministers for local self-government in states. The Union minister acts as the Chairman of the Council.

The Council performs the following functions with regard to local government:

- (i) Considering and recommending the policy matters
- (ii) Making proposals for legislation
- (iii) Examining the possibility of cooperation between the Centre and the states
- (iv) Drawing up a common programme of action
- (v) Recommending Central financial assistance
- (vi) Reviewing the work done by the local bodies with the Central financial assistance

Table 40.3 Articles Related to Municipalities at a Glance

Article No.	Subject-matter
243P	Definitions
243Q	Constitution of municipalities
243R	Composition of municipalities
243S	Constitution and composition of wards committees, and so on
243T	Reservation of seats
243U	Duration of municipalities, and so on
243V	Disqualifications for membership
243W	Powers, authority and responsibilities of municipalities, and so on
243X	Powers to impose taxes by, and funds of, the municipalities
243Y	Finance commission
243Z	Audit of accounts of municipalities
243ZA	Elections to the municipalities
243ZB	Application to union territories
243ZC	Part not to apply to certain areas
243ZD	Committee for district planning
243ZE	Committee for metropolitan planning
243ZF	Continuance of existing laws and municipalities
243ZG	Bar to interference by courts in electoral matters

In this Part...

41. Union Territories

42. Scheduled and Tribal Areas

CHAPTER 41

Union Territories

Under Article 1 of the Constitution, the territory of India comprises three categories of territories: (a) territories of the states; (b) union territories; and (c) territories that may be acquired by the Government of India at any time. At present, there are twenty-eight states, eight union territories and no acquired territories.

The states are the members of the federal system in India and share a distribution of power with the Centre. The union territories, on the other hand, are those areas which are under the direct control and administration of the Central government. Hence, they are also known as 'centrally administered territories'. 'In this way, existence of these territories constitutes a conspicuous departure from federalism in India; the Government of India is plainly unitary in so far as the relationship between New Delhi and these Central enclaves is concerned'¹.

CREATION OF UNION TERRITORIES

During the British Rule, certain areas were constituted as 'scheduled districts' in 1874. Later, they came to be known as 'chief commissioners provinces'. After independence, they were placed in the category of Part 'C'

States and Part 'D' Territories². In 1956, they were constituted as the 'union territories' by the 7th Constitutional Amendment Act (1956) and the States Reorganisation Act (1956). Gradually, some of these union territories have been elevated to statehood. Thus, Himachal Pradesh, Manipur, Tripura, Mizoram, Arunachal Pradesh and Goa, which are states today were formerly union territories. On the other hand, the territories that were acquired from the Portuguese (Goa, Daman and Diu, and Dadra and Nagar Haveli) and the French (Puducherry) were constituted as the union territories.

At present, there are eight Union Territories. They are (along with the year of creation): (1) Andaman and Nicobar Islands—1956, (2) Delhi—1956, (3) Lakshadweep—1956, (4) Puducherry—1962, (5) Chandigarh—1966, (6) Jammu and Kashmir—2019, (7) Ladakh—2019 and (8) Dadra and Nagar Haveli and Daman and Diu—2020. Till 1973, Lakshadweep was known by the name of Laccadive, Minicoy and Amindivi Islands. In 1992, Delhi was redesignated as the National Capital Territory of Delhi. Till 2006, Puducherry was known as Pondicherry.

¹S.R. Maheshwari, *State Governments in India*, Macmillan, 2000 Edition, p. 131.

²In 1950, the constitution contained a four-fold classification of the states and territories of the Indian Union – Part A, Part B and Part C states and Part D territories.



The union territories have been created for a variety of reasons. These are mentioned below³:

1. Political and administrative consideration—Delhi and Chandigarh.
2. Cultural distinctiveness—Puducherry and Dadra and Nagar Haveli and Daman and Diu.
3. Strategic importance—Andaman and Nicobar Islands and Lakshadweep.
4. Special treatment and care of the backward and tribal people—Mizoram, Manipur, Tripura and Arunachal Pradesh which later became states.

In 2019, the erstwhile state of Jammu and Kashmir was bifurcated into two separate union territories, namely, the Union territory of Jammu and Kashmir, and the Union territory of Ladakh. While introducing the Jammu and Kashmir Reorganisation Bill, 2019, in the Parliament, the central government gave the following reasons for the creation of these two new union territories:

1. The Ladakh division of the state of Jammu and Kashmir has a large area but is sparsely populated with a very difficult terrain. There has been a long pending demand of people of Ladakh, to give it the status of a Union territory to enable them to realize their aspirations. The Union territory of Ladakh will be without a legislature.
2. Further, keeping in view the prevailing internal security situation, fuelled by cross border terrorism in the existing state of Jammu and Kashmir, a separate Union territory for Jammu and Kashmir is being created. The Union territory of Jammu and Kashmir will be with a legislature.

In 2020, the erstwhile two separate union territory of Dadra and Nagar Haveli (originally created in 1961) and union territory of Daman and Diu (originally created in 1962) were merged into a new union territory of Dadra

and Nagar Haveli and Daman and Diu^{3a}. While introducing the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Bill, 2019, in the Parliament, the central government gave the following reasons for the merger of these two separate union territories into a single union territory:

1. The Union territories of Dadra and Nagar Haveli and Daman and Diu share a lot in terms of administrative set up, history, language and culture. The Secretaries to various Departments, Chief of Police and Chief Conservator of Forest of the both Union territories are common and the officers of All-India Services posted by the Ministries of Home Affairs, Environment and Forests serve both these territories as per their work allocation. Further, the policies and development schemes in various sectors including Tourism, Industries, Education, Information Technology are similar.
2. Besides these, there are two secretariats and parallel departments which consume infrastructure and manpower in each Union territory. The Administrator, Secretaries, and Heads of certain departments functions in both the Union territories on alternate days affecting their availability to people and monitoring functioning of subordinate staff. The subordinate employees of both the Union territories are separate. Further, various departments of the Government of India have to co-ordinate with both the Union territories separately, causing duplication of works.
3. Having two separate constitutional and administrative entities in both the Union territories leads to lot of duplicacy, inefficiency and wasteful expenditure. Further, this also causes unnecessary financial burden on the Government. Besides

³J.C. Johari: *Indian Government and Politics*, Vishal, volume II, 13th Edition, 2001, p. 499.

^{3a}Vide the Dadra and Nagar Haveli and Daman and Diu (Merger of Union Territories) Act, 2019 with effect from 26th January, 2020.

these, there are various challenges for cadre management and career progression of employees.

4. In view of the policy of the Government to have "Minimum Government, Maximum Governance", considering small population and limited geographical area of both the Union territories and to use the services of officers efficiently, it has been decided to merge the Union territories of Dadra and Nagar Haveli and Daman and Diu into a single Union territory.

ADMINISTRATION OF UNION TERRITORIES

Articles 239 to 241 in Part VIII of the Constitution deal with the union territories. Even though all the union territories belong to one category, there is no uniformity in their administrative system.

Every union territory is administered by the President acting through an administrator appointed by him/her. An administrator of a union territory is an agent of the President and not head of state like a governor. The President can specify the designation of an administrator; it may be Lieutenant Governor or Chief Commissioner or Administrator. At present, it is Lieutenant Governor in the case of Delhi, Puducherry, Andaman and Nicobar Islands, Jammu and Kashmir and Ladakh and Administrator in the case of Chandigarh, Dadra and Nagar Haveli and Daman and Diu and Lakshadweep. The President can also appoint the governor of a state as the administrator of an adjoining union territory. In that capacity, the governor is to act independently of his/her council of ministers.

The Union Territories of Puducherry (in 1963), Delhi (in 1992) and Jammu and Kashmir (in 2019) are provided with a legislative assembly⁴ and a council of ministers headed

by a chief minister. The remaining six union territories do not have such popular political institutions. But, the establishment of such institutions in the union territories does not diminish the supreme control of the President and Parliament over them.

The Parliament can make laws on any subject of the three lists (including the State List) for the union territories. This power of Parliament also extends to Puducherry, Delhi and Jammu and Kashmir, which have their own local legislatures. This means that, the legislative power of Parliament for the union territories on subjects of the State List remain unaffected even after establishing a local legislature for them. But, the legislative assembly of Puducherry can also make laws on any subject of the State List and the Concurrent List. Similarly, the legislative assembly of Delhi can make laws on any subject of the State List (except public order, police and land) and the Concurrent List. Likewise, the legislative assembly of Jammu and Kashmir can make laws on any subject of the State List (except public order and police) and the Concurrent List.

The President can make regulations for the peace, progress and good government of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu and Ladakh. In the case of Puducherry also, the President can legislate by making regulations but only when the assembly is suspended or dissolved. A regulation made by the President has the same force and effect as an act of Parliament and can also repeal or amend any act of Parliament in relation to these union territories.

The Parliament can establish a high court for a union territory or put it under the jurisdiction of the high court of adjacent state. Delhi is the only union territory that has a high court of its own (since 1966). The Bombay High Court has got jurisdiction over the union territory of Dadra and Nagar Haveli and Daman and Diu. Andaman and Nicobar Islands, Chandigarh, Lakshadweep and Puducherry are placed under the Calcutta,

⁴The Assembly of Puducherry consists of 30 members while that of Delhi 70 members and that of Jammu and Kashmir 83 members.



Punjab and Haryana, Kerala, and Madras High Courts respectively. The Jammu and Kashmir & Ladakh High Court is the common high court for the two union territories of Jammu and Kashmir, and Ladakh.

The administrative system (executive, legislature and judiciary) of union territories is summarised in Table 41.1. Similarly, a comparison of states and union territories is also given in Table 41.2.

The Constitution does not contain any separate provisions for the administration of acquired territories. But, the constitutional provisions for the administration of union territories also apply to the acquired territories.

SPECIAL PROVISIONS FOR DELHI

The 69th Constitutional Amendment Act of 1991⁵ provided a special status to the Union Territory of Delhi, and redesignated it the National Capital Territory of Delhi and designated the administrator of Delhi as the lieutenant (lt.) governor. It created a legislative assembly and a council of ministers for Delhi.

The strength of the assembly is fixed at 70 members, directly elected by the people. The elections are conducted by the election commission of India. The assembly can make laws on all the matters of the State List and the Concurrent List except the three matters of the State List, that is, public order, police and land. But, the laws of Parliament prevail over those made by the Assembly.

The strength of the council of ministers is fixed at ten per cent of the total strength of the assembly, that is, seven—one chief minister and six other ministers. The chief minister is appointed by the President (not by the lt. governor). The other ministers are appointed by the President on the advice of the chief minister. The ministers hold office during the pleasure of the President. The council of ministers is collectively responsible to the assembly.

⁵With effect from 1 February 1992.

The council of ministers headed by the chief minister aid and advise the lt. governor in the exercise of his/her functions except in so far as he/she is required to act in his/her discretion. In the case of difference of opinion between the lt. governor and his/her ministers, the lt. governor is to refer the matter to the President for decision and act accordingly.

When a situation arises in which the administration of the territory cannot be carried on in accordance with the above provisions, the President can suspend their (above provisions) operation and make the necessary incidental or consequential provisions for administering the territory. In brief, in case of failure of constitutional machinery, the President can impose his/her rule in the territory. This can be done on the report of the lt. governor or otherwise. This provision resembles Article 356 which deals with the imposition of President's Rule in the states.

The lt. governor is empowered to promulgate ordinances during recess of the assembly. An ordinance has the same force as an act of the assembly. Every such ordinance must be approved by the assembly within six weeks from its reassembly. He can also withdraw an ordinance at any time. But, he cannot promulgate an ordinance when the assembly is dissolved or suspended. Further, no such ordinance can be promulgated or withdrawn without the prior permission of the President.

ADVISORY COMMITTEES OF UNION TERRITORIES

Under the Government of India (Allocation of Business) Rules 1961, Ministry of Home Affairs is the nodal ministry for all matters of Union Territories relating to legislation, finance and budget, services and appointment of Lt. Governors and Administrators.

All the five UTs without legislature (Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli and Daman and Diu, Lakshadweep and Ladakh) have the forum

of Home Minister's Advisory Committee (HMAC)/Administrator's Advisory Committee (AAC). While HMAC is chaired by the Union Home Minister, AAC is chaired by the Administrator of the concerned UTs. The Members of Parliament and elected members

from the local bodies (District Panchayats and Municipal Councils) of the respective UTs are members of these committees among others. These Committees discuss the general issues relating to social and economic development of the UTs.⁶

Table 41.1 Administrative System of Union Territories at a Glance

Union Territories	Executive	Legislature	Judiciary
1. Andaman and Nicobar Islands	Lt. Governor	—	Under Calcutta High Court
2. Chandigarh	Administrator	—	Under Punjab and Haryana High Court
3. Dadra and Nagar Haveli and Daman and Diu	Administrator	—	Under Bombay High Court
4. Delhi	(a) Lt. Governor (b) Chief minister (c) Council of ministers	Legislative Assembly	Separate High Court
5. Lakshadweep	Administrator	—	Under Kerala High Court
6. Puducherry	(a) Lt. Governor (b) Chief minister (c) Council of ministers	Legislative Assembly	Under Madras High Court
7. Jammu and Kashmir	(a) Lt. Governor (b) Chief Minister (c) Council of Ministers	Legislative Assembly	Under Jammu and Kashmir & Ladakh High Court
8. Ladakh	Lt. Governor	—	Under Jammu and Kashmir & Ladakh High Court

Note: The Governor of Punjab is concurrently the Administrator of Chandigarh⁷.

Table 41.2 Comparing States and Union Territories

States	Union Territories
1. Their relationship with Centre is federal.	1. Their relationship with Centre is unitary.
2. They share a distribution of power with the Centre.	2. They are under the direct control and administration of the Centre.
3. They have autonomy.	3. They do not have any autonomy.
4. There is uniformity in their administrative set-up.	4. There is no uniformity in their administrative set-up.
5. Their executive head is known as governor.	5. Their executive head is known by various designations—administrator or lieutenant governor or chief commissioner.

(Contd.)

⁶Annual Report 2021-22, Ministry of Home Affairs, Government of India, p. 60.

⁷India 2022: A Reference Annual, Publications Division, Government of India, p. 71.



States	Union Territories
6. A governor is the constitutional head of the state.	6. An administrator is an agent of the president.
7. Parliament cannot make laws on the subjects of the state list in relation to the states except under extraordinary circumstances.	7. Parliament can make laws on any subject of the three lists in relation to the union territories.

Table 41.3 Articles Related to Union Territories at a Glance

Article No.	Subject-matter
239.	Administration of Union territories
239A.	Creation of local Legislatures or Council of Ministers or both for certain Union territories
239AA.	Special provisions with respect to Delhi
239AB.	Provision in case of failure of constitutional machinery
239B.	Power of administrator to promulgate Ordinances during recess of Legislature
240.	Power of President to make regulations for certain Union territories
241.	High Courts for Union territories
242.	Coorg (Repealed)

CHAPTER 42

Scheduled and Tribal Areas

Article 244, in Part X of the Constitution, envisages a special system of administration for certain areas designated as 'scheduled areas' and 'tribal areas'. The Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram¹. The Sixth Schedule of the Constitution, on the other hand, deals with the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram.

ADMINISTRATION OF SCHEDULED AREAS

'The scheduled areas are treated differently from the other areas in the country because they are inhabited by 'aboriginals' who are socially and economically rather backward, and special efforts need to be made to improve their condition. Therefore, the whole of the normal administrative machinery operating in a state is not extended to the scheduled areas and the Central government has somewhat greater responsibility for these areas'².

¹At present, ten states of India have scheduled areas. These are: Andhra Pradesh, Telangana, Jharkhand, Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.

²M.P. Jain, *Indian Constitutional Law*, Wadhwa, Fourth Edition, 1987, p. 236.

The various features of administration contained in the Fifth Schedule are as follows:

1. **Declaration of Scheduled Areas:** The President is empowered to declare an area to be a scheduled area. He/she can also increase or decrease its area, alter its boundary lines, rescind such designation or make fresh orders for such redesignation on an area in consultation with the governor of the state concerned.

The criteria for declaring any area as a scheduled area is as follows^{2a}:

- (i) Preponderance of tribal population;
- (ii) Compactness and reasonable size of the area;
- (iii) A viable administrative entity such as a District, Block or Taluk; and
- (iv) Economic backwardness of the area as compared to the neighbouring areas.

The above criteria for declaration of scheduled areas is as such not spelt out in the constitution, but has become well-established.

2. **Executive Power of State and Centre:** The executive power of a state extends to the scheduled areas therein. But the governor has a special responsibility regarding such areas. He/she has to submit a report to the President regarding the administration of such areas, annually or whenever so required

^{2a}Annual Report 2021-22, Ministry of Tribal Affairs, Government of India, p. 51.



by the President. The executive power of the Centre extends to giving directions to the states regarding the administration of such areas.

3. Tribes Advisory Council: Each state having scheduled areas has to establish a tribes advisory council to advise on welfare and advancement of the scheduled tribes. It is to consist of 20 members, three-fourths of whom are to be the representatives of the scheduled tribes in the state legislative assembly. A similar council can also be established in a state having scheduled tribes but not scheduled areas therein, if the President so directs.

4. Law applicable to Scheduled Areas: The governor is empowered to direct that any particular act of Parliament or the state legislature does not apply to a scheduled area or apply with specified modifications and exceptions. He/she can also make regulations for the peace and good government of a scheduled area after consulting the tribes advisory council. Such regulations may prohibit or restrict the transfer of land by or among members of the scheduled tribes, regulate the allotment of land to members of the scheduled tribes and regulate the business of money-lending in relation to the scheduled tribes. Also, a regulation may repeal or amend any act of Parliament or the state legislature, which is applicable to a scheduled area. But, all such regulations require the assent of the President.

The Constitution requires the President to appoint a commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the states. He/she can appoint such a commission at any time but compulsorily after ten years of the commencement of the Constitution. Hence, a commission was appointed in 1960. It was headed by U.N. Dhebar and submitted its report in 1961. After four decades, the second commission was appointed in

2002, under the chairmanship of Dilip Singh Bhuria. It submitted its report in 2004.

ADMINISTRATION OF TRIBAL AREAS

The Constitution, under Sixth Schedule, contains special provisions for the administration of tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram. The rationality behind the special arrangements in respect of only these four states lies in the following:

The tribes in Assam, Meghalaya, Tripura and Mizoram have not assimilated much the life and ways of the other people in these states. These areas have hitherto been anthropological specimens. The tribal people in other parts of India have more or less adopted the culture of the majority of the people in whose midst they live. The tribes in Assam, Meghalaya, Tripura and Mizoram, on the other hand, still have their roots in their own culture, customs and civilization. These areas are, therefore, treated differently by the Constitution and sizeable amount of autonomy has been given to these people for self-government.³

At present, there are ten tribal areas in the four north-eastern states of Assam, Meghalaya, Tripura and Mizoram. These are mentioned in Table 42.1.

The various features of administration contained in the Sixth Schedule are as follows:

1. The tribal areas in the four states of Assam, Meghalaya, Tripura and Mizoram have been constituted as autonomous districts. But, they do not fall outside the executive authority of the state concerned.
2. The governor is empowered to organise and re-organise the autonomous districts. Thus, he/she can increase or decrease their areas or change their names or define their boundaries and so on.

³Same as footnote 2 above, p. 237.

3. If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions.
4. Each autonomous district has a district council consisting of 30 members, of whom four are nominated by the governor and the remaining 26 are elected on the basis of adult franchise. The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor. Each autonomous region also has a separate regional council.
5. The district and regional councils administer the areas under their jurisdiction. They can make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
6. The district and regional councils within their territorial jurisdictions can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them. The jurisdiction of high court over these suits and cases is specified by the governor.
7. The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribals. But, such regulations require the assent of the governor.
8. The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes.
9. The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions⁴.
10. The governor can appoint a commission to examine and report on any matter relating to the administration of the autonomous districts or regions. He/she may dissolve a district or regional council on the recommendation of the commission.

⁴The power of direction, in this regard, lies either with the President or the Governor. Thus, in the case of Assam, it lies with the Governor, both in respect of acts of Parliament or state legislature. In the case of Meghalaya, Tripura and Mizoram, it lies with the President in respect of acts of Parliament and governor in respect of acts of state legislature.

Table 42.1 Tribal Areas at a Glance

States		Tribal Areas	
1.	Assam	1.	North Cachar Hills District.
		2.	Karbi Anglong District.
		3.	Bodoland Territorial Areas District.
2.	Meghalaya	1.	Khasi Hills District.
		2.	Jaintia Hills District.
		3.	Garo Hills District.
3.	Tripura		Tripura Tribal Areas District.
4.	Mizoram	1.	Chakma District.
		2.	Mara District.
		3.	Lai District.

**Table 42.2** Articles Related to Scheduled and Tribal Areas at a Glance

Article No.	Subject-matter
244.	Administration of Scheduled Areas and Tribal Areas
244A.	Formation of an autonomous state comprising certain tribal areas in Assam and creation of local legislature or Council of Ministers or both therefore
339.	Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes

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In this Part...

- 43. Election Commission
- 44. Union Public Service Commission
- 45. State Public Service Commission
- 46. Finance Commission
- 47. Goods and Services Tax Council
- 48. National Commission for SCs
- 49. National Commission for STs

- 50. National Commission for BCs
- 51. Special Officer for Linguistic Minorities
- 52. Comptroller and Auditor General of India
- 53. Attorney General of India
- 54. Advocate General of the State
- 55. Constitutional Prescriptions

CHAPTER 43 Election Commission

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction and control of elections to parliament, state legislatures, the office of President of India and the office of Vice-President of India shall be vested in the election commission. Thus, the Election Commission is an All-India body in the sense that it is common to both the Central government and the state governments.

It must be noted here that the election commission is not concerned with the elections to panchayats and municipalities in the states. For this, the Constitution of India provides for a separate State Election Commission¹.

COMPOSITION

Article 324 of the Constitution has made the following provisions with regard to the composition of election commission:

1. The Election Commission shall consist of the chief election commissioner and such number of other election commissioners, if any, as the President may from time to time fix.
2. The appointment of the chief election commissioner and other election commissioners shall be made by the President.
3. When any other election commissioner is so appointed, the chief election commissioner shall act as the chairman of the election commission.
4. The President may also appoint after consultation with the election commission such regional commissioners as he/she may consider necessary to assist the election commission.
5. Subject to the provisions of any law made by the Parliament, the conditions of service and tenure of office of the election commissioners and the regional commissioners shall be determined by the President.

Since its inception in 1950 and till 15 October 1989, the election commission functioned as a single member body consisting of the Chief Election Commissioner. On

¹Vide 73rd and 74th Constitutional Amendment Acts of 1992.



16 October 1989, the President appointed two more election commissioners to cope with the increased work of the election commission on account of lowering of the voting age from 21 to 18 years.² Thereafter, the Election Commission functioned as a multimember body consisting of three election commissioners. However, the two posts of election commissioners were abolished in January 1990 and the Election Commission was reverted to the earlier position. Again in October 1993, the President appointed two more election commissioners. Since then and till today, the Election Commission has been functioning as a multi-member body consisting of three election commissioners.

The Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991 contains the following provisions:

1. The chief election commissioner and the two other election commissioners shall have equal powers and receive equal salary, allowances and other perquisites, which are similar to those of a judge of the Supreme Court.³
2. In case of difference of opinion amongst the Chief Election Commissioner and/or two other election commissioners, the matter is decided by the Commission by majority.
3. They hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. They can also resign at any time by writing to the President.

INDEPENDENCE

Article 324 of the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Election Commission:

1. The chief election commissioner is provided with the security of tenure.

²By the 61st Constitutional Amendment Act of 1988, which came into force in 1989.

³In 2018, the salary of a judge of the Supreme Court had been fixed at ₹2.50 lakh per month.

He/she cannot be removed from his/her office except in same manner and on the same grounds as a judge of the Supreme Court. In other words, he/she can be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he/she does not hold his/her office till the pleasure of the President, though they are appointed by him/her.

2. The service conditions of the chief election commissioner cannot be varied to his/her disadvantage after his/her appointment.
3. Any other election commissioner or a regional commissioner cannot be removed from office except on the recommendation of the chief election commissioner. This means that the protection (security of tenure) available to the Chief Election Commissioner is not available to the other election commissioners.

Though the constitution has sought to safeguard and ensure the independence and impartiality of the Election Commission, some flaws can be noted, viz.,

1. The Constitution has not prescribed the qualifications (legal, educational, administrative or judicial) of the members of the Election Commission.
2. The Constitution has not specified the term of the members of the Election Commission.
3. The Constitution has not debarred the retiring election commissioners from any further appointment by the government.

In *Anoop Baranwal case*^{3a} (2023), the Supreme Court gave the following directions to ensure the independence and neutrality of the Election Commission, free from all external political and executive interference:

1. It declared that the appointment of the Chief Election Commissioner and the other Election Commissioners shall be

^{3a}*Anoop Baranwal vs. Union of India* (2023).

made on the recommendations of a three-member committee consisting of the following:

- (a) The Prime Minister,
- (b) The Leader of the Opposition in the Lok Sabha (in case there is no Leader of the Opposition in the Lok Sabha, then the Leader of the largest opposition party in terms of the numerical strength), and
- (c) The Chief Justice of India.

2. It is desirable that the grounds of removal of the other Election Commissioners shall be the same as that of the Chief Election Commissioner i.e., on the like grounds as a Judge of the Supreme Court subject to the recommendation of the Chief Election Commissioner as provided under Article 324 of the Constitution.
3. The conditions of service of the other Election Commissioners shall not be varied to their disadvantage after appointment.

According to the Supreme Court, the above directions shall be in effect, until the Parliament makes a law in consonance with Article 324 of the constitution.

POWERS AND FUNCTIONS

The powers and functions of the Election Commission with regard to elections to the Parliament, state legislatures and offices of President and Vice-President can be classified into three categories, viz,

1. Administrative
2. Advisory
3. Quasi-Judicial

In detail, these powers and functions are:

1. To determine the territorial areas of the electoral constituencies throughout the country on the basis of the Delimitation Commission Act of Parliament.⁴
2. To prepare and periodically revise electoral rolls and to register all eligible voters.

3. To notify the dates and schedules of elections and to scrutinise nomination papers.
4. To grant recognition to political parties and allot election symbols to them.
5. To act as a court for settling disputes related to granting of recognition to political parties and allotment of election symbols to them.
6. To appoint officers for enquiring into disputes relating to electoral arrangements.
7. To determine the code of conduct to be observed by the parties and the candidates at the time of elections.
8. To prepare a roster for publicity of the policies of the political parties on radio and TV in times of elections.
9. To advise the President on matters relating to the disqualifications of the members of Parliament.
10. To advise the governor on matters relating to the disqualifications of the members of state legislature.
11. To cancel polls in the event of rigging, booth capturing, violence and other irregularities.
12. To request the President or the governor for requisitioning the staff necessary for conducting elections.
13. To supervise the machinery of elections throughout the country to ensure free and fair elections.
14. To advise the President whether elections can be held in a state under president's rule in order to extend the period of emergency after one year.
15. To register political parties for the purpose of elections and grant them the status of national or state parties on the basis of their poll performance.

The Election Commission is assisted by deputy election commissioners. They are drawn from the civil service and appointed by the commission with tenure system. They are assisted, in turn, by the secretaries, joint secretaries, deputy secretaries and under secretaries posted in the secretariat of the commission.

⁴The Parliament has made the Delimitation Commission Acts in 1952, 1962, 1972 and 2002.



At the state level, the Election Commission is assisted by the chief electoral officer, who is appointed by the chief election commissioner in consultation with the state government. Below this, at the district level, the collector acts as the district returning officer. He/she appoints a returning officer for every constituency in the district and presiding officer for every polling booth in the constituency.

VISION, MISSION AND PRINCIPLES

The vision, mission and guiding principles of the Election Commission are as follows⁵:

Vision The Election Commission of India strives to be an Institution of Excellence by enhancing active engagement, participation; and deepening and strengthening electoral democracy in India and globally.

Mission The Election Commission of India maintains independence, integrity and autonomy; ensures accessibility, inclusiveness, and ethical participation of stakeholders; and, adopts highest standards of professionalism for delivering free, fair, and transparent elections to strengthen the trust in electoral democracy and governance.

Guiding Principles The Commission has laid down for itself guiding principles of good governance:

1. To uphold the values enshrined in the Constitution viz, equality, equity,

impartiality, independence; and rule of law in superintendence, direction and control over the electoral governance;

2. To conduct elections with highest standard of credibility, freeness, fairness, transparency, integrity, accountability, autonomy and professionalism;
3. To ensure participation of all eligible citizens in the electoral process in an inclusive voter centric and voter-friendly environment;
4. To engage with political parties and all stakeholders in the interest of electoral process;
5. To promote awareness about the electoral process and electoral governance amongst stakeholders namely, voters, political parties, election functionaries, candidates and people at large; and to enhance and strengthen confidence and trust in the electoral system of this country;
6. To develop the human resource for effective and professional delivery of electoral services;
7. To build quality infrastructure for smooth conduct of electoral process;
8. To adopt technology for improvement in all areas of electoral process;
9. To strive for adoption of innovative practices for achieving excellence and overall realization of the vision and mission;
10. To contribute towards the reinforcement of democratic values by maintaining and reinforcing confidence and trust of the people in the electoral system of the country.

⁵Strategic Plan 2016-2025, Election Commission of India, pp. 8-9.

CHAPTER 44 Union Public Service Commission

The Union Public Service Commission (UPSC) is the central recruiting agency in India. It is an independent constitutional body in the sense that it has been directly created by the Constitution. Articles 315 to 323 in Part XIV of the Constitution contain elaborate provisions regarding the composition, appointment and removal of members along with the independence, power and functions of the UPSC.

COMPOSITION

The UPSC consists of a chairman and other members appointed by the President of India. The Constitution, without specifying the strength of the Commission has left the matter to the discretion of the President, who determines its composition. Further, no qualifications are prescribed for the Commission's membership except that one-half of the members of the Commission should be such persons who have held office for at least ten years either under the Government of India or under the government of a state. The Constitution also authorises the President to determine the conditions of service of the chairman and other members of the Commission. In addition, the President is authorised to make provisions with respect to the number of members of the staff of the Commission and their conditions of service.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 65 years, whichever is earlier. However, they can relinquish their offices at any time by addressing their

resignation to the president. They can also be removed before the expiry of their term by the President in the manner as provided in the Constitution.

The President can appoint one of the members of the UPSC as an acting chairman in the following two circumstances¹:

- (a) When the office of the chairman falls vacant; or
- (b) When the chairman is unable to perform his/her functions due to absence or some other reason.

The acting chairman functions till a person appointed as chairman enters on the duties of the office or till the chairman is able to resume his/her duties.

REMOVAL

The President can remove the chairman or any other member of UPSC from the office under the following circumstances:

- (a) If he/she is adjudged an insolvent (that is, has gone bankrupt);
- (b) If he/she engages, during his/her term of office, in any paid employment outside the duties of his/her office; or
- (c) If he/she is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

In addition to these, the President can also remove the chairman or any other member of UPSC for misbehaviour. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If the

¹Added by the 15th Amendment Act of 1963.



Supreme Court, after the enquiry, upholds the cause of removal and advises so, the President can remove the chairman or a member. Under the provisions of the Constitution, the advice tendered by the Supreme Court in this regard is binding on the President. During the course of enquiry by the Supreme Court, the President can suspend the chairman or the member of UPSC.

Defining the term 'misbehaviour' in this context, the Constitution states that the chairman or any other member of the UPSC is deemed to be guilty of misbehaviour if he/she (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the UPSC:

- (a) The chairman or a member of the UPSC can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy security of tenure.
- (b) The conditions of service of the chairman or a member, though determined by the President, cannot be varied to his/her disadvantage after his/her appointment.
- (c) The entire expenses including the salaries, allowances and pensions of the chairman and members and also the staff of the UPSC are charged on the Consolidated Fund of India. Thus, they are not subject to vote of Parliament.
- (d) The chairman of the UPSC (on ceasing to hold office) is not eligible for further employment in the Government of India or a state².

²In 1979, the Supreme Court upheld the validity of appointment of A.R. Kidwai, a former Chairman of UPSC, as the governor of Bihar. It ruled that the

- (e) A member of the UPSC (on ceasing to hold office) is eligible for appointment as the chairman of UPSC or a State Public Service Commission (SPSC), but not for any other employment in the Government of India or a state³.
- (f) The chairman or a member of UPSC is (after having completed his/her first term) not eligible for reappointment to that office (i.e., not eligible for second term).

FUNCTIONS

The UPSC performs the following functions:

- (i) It conducts examinations for appointments to the all-India services, Central services and public services of the centrally administered territories.
- (ii) It assists the states (if requested by two or more states to do so) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
- (iii) It serves all or any of the needs of a state on the request of the state governor and with the approval of the president of India.
- (iv) It is consulted on the following matters and it advises:
 - (a) On all matters relating to methods of recruitment to civil services and for civil posts
 - (b) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions and transfers

office of the governor is a 'constitutional office' and not an employment under the government.

³When a member of the UPSC is appointed as its chairman, he/she holds the new office for six years or until the age of superannuation, whichever is earlier.

- (c) On all disciplinary matters affecting a person serving under the Government of India in a civil capacity. This includes memorials and petitions relating to such matters
- (d) On any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him/her in respect of acts done in the execution of his/her official duties
- (e) On any claim for the award of a pension in respect of injuries sustained by a civil servant while serving under the Government of India and any question as to the amount of any such award
- (f) On any other matter referred to it by the President

The Supreme Court has held that if the government fails to consult the UPSC in the matters (mentioned above), the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in consultation with the UPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the UPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or mala fides.

The additional functions relating to the services of the Union can be conferred on the UPSC by the Parliament. The Parliament can also place the personnel system of any authority, corporate body or public institution within the jurisdiction of the UPSC. Hence, the jurisdiction of the UPSC can be extended by an act made by the Parliament.

The UPSC presents, annually, to the President a report on its performance. The President places this report before both the Houses of Parliament, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

LIMITATIONS

The following matters are kept outside the functional jurisdiction of the UPSC. In other words, the UPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
- (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.
- (c) With regard to the selection for a temporary or officiating appointment to a post, if (a) the person appointed is not likely to hold the post for a period of more than one year and (b) it is necessary in the public interest to make the appointment immediately and reference to the UPSC will cause undue delay
- (d) With regard to the appointments to a bulk of Group C and Group D Central Services
- (e) With regard to the appointments to the posts of Chairman and members of the boards, commissions, tribunals and other similar authorities
- (f) With regard to the appointments to the posts of Heads of Diplomatic, Consular and other similar Indian Missions in countries abroad (eg. Ambassadors, High Commissioners, Ministers, Commissioners, Consuls - General, Representatives, Agents)

The President can exclude posts, services and matters from the purview of the UPSC. The Constitution states that the President, in respect to the all-India services and Central services and posts may make regulations specifying the matters in which, it shall not be necessary to consult the UPSC. But, all such regulations made by the President shall be laid before each House of Parliament for at least 14 days. The Parliament can amend or repeal them.

Under the above provision, the President has made regulations which are called as the UPSC (Exemption from Consultation) Regulations,



1958. These Regulations have been amended from time to time.

ROLE

The Constitution visualises the UPSC to be the 'watch-dog of merit system' in India. It is concerned with the recruitment to the All-India Services and Central Services—group A and group B and advises the government, when consulted, on promotion and disciplinary matters. It is not concerned with the classification of services, pay and service conditions, cadre management, training, and so on. These matters are handled by the Department of Personnel and Training—one of the three departments of the Ministry of Personnel, Public Grievances and Pensions⁴. Therefore, the UPSC is only a central recruiting agency

⁴In 1985, a new full-fledged Ministry of Personnel, Public Grievances and Pensions was created with three separate departments. These are Department of Personnel and Training, Department of Administrative Reforms and Public Grievances, and Department of Pensions and Pensioners' Welfare.

while the Department of Personnel and Training is the central personnel agency in India.

The role of the UPSC is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government. It is upto the Union government to accept or reject that advise. Further, the government can also make rules which regulate the scope of the advisory functions of the UPSC⁵.

Also, the emergence of Central Vigilance Commission (CVC) in 1964 affected the role of the UPSC in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant. The problem arises when the two bodies tender conflicting advise. However, the UPSC, being an independent constitutional body, has an edge over the CVC, which is created by an executive resolution of the Government of India and conferred a statutory status in 2003.

⁵Such rules are known as the UPSC (Exemption from Consultation) Regulations.

Table 44.1 Articles Related to the UPSC at a Glance

Article No.	Subject-matter
315	Public Service Commissions for the Union and for the states
316	Appointment and term of office of members
317	Removal and suspension of a member of a Public Service Commission
318	Power to make regulations as to conditions of service of members and staff of the Commission
319	Prohibition as to the holding of office by members of commission on ceasing to be such members
320	Functions of Public Service Commissions
321	Power to extend functions of Public Service Commissions
322	Expenses of Public Service Commissions
323	Reports of Public Service Commissions

CHAPTER 45

State Public Service Commission

Parallel to the Union Public Service Commission (UPSC) at the Centre, there is a State Public Service Commission (SPSC) in each state. The same set of Articles (i.e., 315 to 323 in Part XIV) of the Constitution also deal with the composition, appointment and removal of members, power and functions and independence of a SPSC.

COMPOSITION

A State Public Service Commission consists of a chairman and other members appointed by the governor of the state. The Constitution does not specify the strength of the Commission but has left the matter to the discretion of the Governor. Further, no qualifications are prescribed for the commission's membership except that one-half of the members of the commission should be such persons who have held office for at least ten years either under the government of India or under the Government of a state. The Constitution also authorises the governor to determine the conditions of service of the chairman and members of the Commission. In addition, the Governor is authorised to make provisions with respect to the number of members of the staff of the Commission and their conditions of service.

The chairman and members of the Commission hold office for a term of six years or until they attain the age of 62 years¹, whichever is

¹Originally, it was 60 years. The 41st Amendment Act of 1976 raised it to 62 years.

earlier (in the case of UPSC, the age limit is 65 years). However, they can relinquish their offices at any time by addressing their resignation to the governor.

The governor can appoint one of the members of the SPSC as an acting chairman in the following two circumstances²:

- (a) When the office of the chairman falls vacant; or
- (b) When the chairman is unable to perform his/her functions due to absence or some other reason.

The acting chairman functions till the person appointed as chairman enters on the duties of the office or till the chairman is able to resume his/her duties.

REMOVAL

Although the chairman and members of a SPSC are appointed by the governor, they can be removed only by the President (and not by the governor). The President can remove them on the same grounds and in the same manner as he/she can remove a chairman or a member of the UPSC. Thus, he/she can remove him/her under the following circumstances:

- (a) If he/she is adjudged an insolvent (i.e., has gone bankrupt); or
- (b) If he/she engages, during his/her term of office, in any paid employment outside the duties of his/her office; or

²Added by the 15th Amendment Act of 1963.



- (c) If he/she is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body³.

In addition to these, the President can also remove the chairman or any other member of the SPSC for misbehaviour. However, in this case, the President has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, the President can remove the chairman or a member. Under the provisions of the Constitution, the advice tendered by the Supreme Court in this regard is binding on the President. However, during the course of enquiry by the Supreme Court, the governor can suspend the concerned chairman or member, pending the final removal order of the President on receipt of the report of the Supreme Court.

Further, the Constitution has also defined the term 'misbehaviour' in this context. The Constitution states that the chairman or any other member of a SPSC is deemed to be guilty of misbehaviour, if he/she (a) is concerned or interested in any contract or agreement made by the Government of India or the government of a state, or (b) participates in any way in the profit of such contract or agreement or in any benefit therefrom otherwise than as a member and in common with other members of an incorporated company.

INDEPENDENCE

As in the case of UPSC, the Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of a SPSC:

- (a) The chairman or a member of a SPSC can be removed from office by the President

³In 1993, the Supreme Court ruled that appointment of a university professor (known to be blind) as a member of a SPSC cannot be set aside on the ground of infirmity of body or mind.

only in the manner and on the grounds mentioned in the Constitution. Therefore, they enjoy the security of tenure.

- (b) The conditions of service of the chairman or a member, though determined by the governor, cannot be varied to his/her disadvantage after his/her appointment.
- (c) The entire expenses including the salaries, allowances and pensions of the chairman and members and also the staff of a SPSC are charged on the consolidated fund of the state. Thus, they are not subject to vote of the state legislature.
- (d) The chairman of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC or as the chairman of any other SPSC, but not for any other employment under the Government of India or a state.
- (e) A member of a SPSC (on ceasing to hold office) is eligible for appointment as the chairman or a member of the UPSC, or as the chairman of that SPSC or any other SPSC, but not for any other employment under the Government of India or a state.
- (f) The chairman or a member of a SPSC is (after having completed his/her first term) not eligible for reappointment to that office (that is, not eligible for second term).

FUNCTIONS

A SPSC performs all those functions in respect of the state services as the UPSC does in relation to the Central services:

- (a) It conducts examinations for appointments to the services of the state.
- (b) It is consulted on the following matters and it advises:
- (i) On all matters relating to methods of recruitment to civil services and for civil posts.
 - (ii) On the principles to be followed in making appointments to civil

services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions and transfers.

- (iii) On all disciplinary matters affecting a person serving under the government of the state in a civil capacity including memorials or petitions relating to such matters.
- (iv) On any claim for reimbursement of legal expenses incurred by a civil servant in defending legal proceedings instituted against him/her in respect of acts done in the execution of his/her official duties.
- (v) On any claim for the award of a pension in respect of injuries sustained by a person while serving under the government of the state and any question as to the amount of any such award.
- (vi) Any other matter referred to it by the Governor.

The Supreme Court has held that if the government fails to consult the SPSC in these matters, the aggrieved public servant has no remedy in a court. In other words, the court held that any irregularity in consultation with the SPSC or acting without consultation does not invalidate the decision of the government. Thus, the provision is directory and not mandatory. Similarly, the court held that a selection by the SPSC does not confer any right to the post upon the candidate. However, the government is to act fairly and without arbitrariness or malafides.

The additional functions relating to the services of the state can be conferred on the SPSC by the state legislature. The state legislature can also place the personnel system of any local authority, corporate body or public institution within the jurisdiction of the SPSC. Hence, the jurisdiction of the SPSC can be extended by an Act made by the state legislature.

The SPSC presents, annually, to the governor a report on its performance. The governor places this report before both the Houses of the state legislature, along with a memorandum explaining the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

LIMITATIONS

The following matters are kept outside the functional jurisdiction of the SPSC. In other words, the SPSC is not consulted on the following matters:

- (a) While making reservations of appointments or posts in favour of any backward class of citizens.
- (b) While taking into consideration the claims of scheduled castes and scheduled tribes in making appointments to services and posts.

The governor can exclude posts, services and matters from the purview of the SPSC. The Constitution states that the governor, in respect to the state services and posts may make regulations specifying the matters in which, it shall not be necessary to consult the SPSC. But, all such regulations made by the governor shall be laid before each House of the state legislature for at least 14 days. The state legislature can amend or repeal them.

ROLE

The Constitution visualises the SPSC to be the 'watchdog of merit system' in the state. It is concerned with the recruitment to the state services and advises the government, when consulted, on promotion and disciplinary matters. It is not concerned with the classification of services, pay and service conditions, cadre management, training and so on. These matters are handled by the Department of Personnel or the General Administration Department. Therefore, the SPSC is only a central recruiting agency in the state while the Department of Personnel or the General



Administration Department is the central personnel agency in the state.

The role of SPSC is not only limited, but also recommendations made by it are only of advisory nature and hence, not binding on the government. It is up to the state government to accept or reject that advice. Further, the government can also make rules which regulate the scope of the advisory functions of the SPSC⁴.

Also, the emergence of State Vigilance Commission (SVC) affected the role of SPSC in disciplinary matters. This is because both are consulted by the government while taking disciplinary action against a civil servant. The problem arises when the two bodies tender conflicting advice. However, the SPSC, being an independent constitutional body, has an edge over the SVC.

It must be noted here that the SPSC is consulted by the governor while framing rules for appointment to judicial service of the state other than the posts of district judges. In this regard, the concerned state high court is also consulted.

⁴Such rules are known as the SPSC (Exemption from Consultation) Regulations.

JOINT STATE PUBLIC SERVICE COMMISSION

The Constitution makes a provision for the establishment of a Joint State Public Service Commission (JSPSC) for two or more states. While the UPSC and the SPSC are created directly by the Constitution, a JSPSC can be created by an act of Parliament on the request of the state legislatures concerned. Thus, a JSPSC is a statutory and not a constitutional body.

The chairman and members of a JSPSC are appointed by the President. They hold office for a term of six years or until they attain the age of 62 years, whichever is earlier. They can be suspended or removed by the President. They can also resign from their offices at any time by submitting their resignation letters to the President.

The number of members of a JSPSC and their conditions of service are determined by the President.

A JSPSC presents its annual performance report to each of the concerned state governors. Each governor places the report before the state legislature.

Table 45.1 Articles Related to the SPSC at a Glance

Article No.	Subject-matter
315	Public Service Commissions for the Union and for the states
316	Appointment and term of office of members
317	Removal and suspension of a member of a Public Service Commission
318	Power to make regulations as to conditions of service of members and staff of the Commission
319	Prohibition as to the holding of office by members of commission on ceasing to be such members
320	Functions of Public Service Commissions
321	Power to extend functions of Public Service Commissions
322	Expenses of Public Service Commissions
323	Reports of Public Service Commissions

CHAPTER 46 Finance Commission

Article 280 of the Constitution of India provides for a Finance Commission as a quasi-judicial body. It is constituted by the President of India every fifth year or at such earlier time as he/she considers necessary.

Till now, fifteen Finance Commissions have been constituted. The name of the commissions, the years in which they were constituted and submitted their reports, and the names of the chairman are given in Table 46.1.

COMPOSITION

The Finance Commission consists of a chairman and four other members to be appointed by the President. They hold office for such period as specified by the President in his/her order. They are eligible for reappointment.

The Constitution authorises the Parliament to determine the qualifications of members of the commission and the manner in which they should be selected. Accordingly, the Parliament has specified the qualifications of the chairman and members of the commission¹. The chairman should be a person having experience in public affairs and the four other members should be selected from amongst the following:

1. A judge of high court or one qualified to be appointed as one.
2. A person who has specialised knowledge of finance and accounts of the government.
3. A person who has wide experience in financial matters and administration.

¹Vide the Finance Commission Act, 1951.

4. A person who has special knowledge of economics.

FUNCTIONS

The Finance Commission is required to make recommendations to the President of India on the following matters:

1. The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.
2. The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India).
3. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission².
4. Any other matter referred to it by the President in the interests of sound finance.

Till 1960, the commission also suggested the grants given to the States of Assam, Bihar, Odisha and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products. These grants were to be given for a temporary period of ten years from the commencement of the Constitution.

²This function was added by the 73rd and 74th Constitutional Amendment Acts of 1992, which have granted constitutional status and protection on the panchayats and the municipalities respectively.



The commission submits its report to the President. He/she lays it before both the Houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

ADVISORY ROLE

It must be clarified here that the recommendations made by the Finance Commission are only of advisory nature and hence, not binding on the government. It is up to the Union government to implement its recommendations on granting money to the states.

To put it in other words, 'It is nowhere laid down in the Constitution that the recommendations of the commission shall be binding upon the Government of India or that it would give rise to a legal right in favour of the beneficiary states to receive the money recommended to be offered to them by the Commission'³.

³D.D. Basu, *Introduction to the Constitution of India*, Wadhwa 19th Edition, 2001, p. 331.

As rightly observed by Dr. P.V. Rajamannar, the Chairman of the Fourth Finance Commission, "Since the Finance Commission is a constitutional body expected to be quasi-judicial, its recommendations should not be turned down by the Government of India unless there are very compelling reasons".

The Constitution of India envisages the Finance commission as the balancing wheel of fiscal federalism in India. However, till 2014, its role in the Centre-state fiscal relations was undermined by the erstwhile Planning Commission, a non-constitutional and a non-statutory body. The Dr. P.V. Rajamannar also observed that there was an overlapping of functions and responsibilities between the Finance Commission and the erstwhile Planning Commission in federal fiscal transfers.⁴ In 2015, the Planning Commission was replaced by a new body called NITI Aayog (National Institution for Transforming India).

⁴Report of the Fourth Finance Commission, New Delhi, Government of India, 1965, pp. 88-90.

Table 46.1 Finance Commissions Appointed so far

Finance Commission	Chairman	Appointed in	Submitted Report in	Period of implementation of Report
First	K.C. Neogy	1951	1952	1952-57
Second	K. Santhanam	1956	1957	1957-62
Third	A.K. Chanda	1960	1961	1962-66
Fourth	Dr. P.V. Rajamannar	1964	1965	1966-69
Fifth	Mahavir Tyagi	1968	1969	1969-74
Sixth	Brahmananda Reddy	1972	1973	1974-79
Seventh	J.M. Shelat	1977	1978	1979-84
Eighth	Y.B. Chavan	1982	1984	1984-89
Ninth	N.K.P. Salve	1987	1989	1989-95
Tenth	K.C. Pant	1992	1994	1995-2000
Eleventh	A.M. Khusro	1998	2000	2000-2005
Twelfth	Dr. C. Rangarajan	2002	2004	2005-2010

Finance Commission	Chairman	Appointed in	Submitted Report in	Period of implementation of Report
Thirteenth	Dr. Vijay Kelkar	2007	2009	2010–2015
Fourteenth	Y.V. Reddy	2013	2014	2015–2020
Fifteenth	N.K. Singh	2017	2019 & 2020 ⁵	2020–2026

Table 46.2 Articles Related to Finance Commission at a Glance

Article No.	Subject-matter
280.	Finance Commission
281.	Recommendations of the Finance Commission

⁵On December 5, 2019, the Commission submitted its first report containing recommendations for the year 2020–21. Again, on November 9, 2020, the Commission submitted its second report containing recommendations for the period 2021–22 to 2025–26.

CHAPTER 47

Goods and Services Tax Council

ESTABLISHMENT

The 101st Amendment Act of 2016 paved the way for the introduction of a new tax regime (i.e. goods and services tax – GST) in the country. The smooth and efficient administration of this tax requires co-operation and co-ordination between the centre and the states. In order to facilitate this consultation process, the amendment provided for the establishment of a Goods and Services Tax Council or the GST Council.

The amendment inserted a new Article 279-A in the Constitution. This Article empowered the President to constitute a GST Council by an order. Accordingly, the President issued the order in 2016 and constituted the Council¹.

The Secretariat of the Council is located at New Delhi. The Union Revenue Secretary² acts as the ex-officio Secretary to the Council.

VISION AND MISSION

While discharging its functions, the Council is to be guided by the need for a harmonised structure of GST and the development of a harmonised national market for goods and services. Further, the Council has to determine the procedure in the performance of its functions.

The vision and mission of the Council are as follows:

Vision: To establish the highest standards of co-operative federation in the functioning of

¹The Presidential order was issued on 15 September 2016.

²Department of Revenue, the Ministry of Finance, Government of India.

the Council, which is the first constitutional federal body vested with powers to take all major decisions relating to GST.

Mission: Evolving by a process of wider consultation, a GST structure, which is information technology-driven and user friendly.

COMPOSITION

The Council is a joint forum of the centre and the states and consists of the following members:

- (a) The Union Finance Minister as the Chairperson
- (b) The Union Minister of State in-charge of Revenue or Finance
- (c) The Minister in-charge of Finance or Taxation or any other Minister nominated by each state government

The members of the Council from the states have to choose one amongst themselves to be the Vice-Chairperson of the Council. They can also decide his term.

The Union Cabinet also decided to include the Chairperson of the Central Board of Indirect Taxes and Customs (CBIC) as a permanent invitee (non-voting) to all proceedings of the Council.

WORKING

The decisions of the Council are taken at its meetings. One-half of the total number of members of the Council is the quorum for conducting a meeting. Every decision of the Council is to be taken by a majority of not less than three-fourths of the weighted votes

of the members present and voting at the meeting. The decision is taken in accordance with the following principles:

- (i) The vote of the central government shall have a weightage of one-third of the total votes cast in that meeting.
- (ii) The votes of all the state governments combined shall have a weightage of two-thirds of the total votes cast in that meeting.

Any act or proceedings of the Council will not become invalid on the following grounds:

- (i) any vacancy or defect in the constitution of the Council; or
- (ii) any defect in the appointment of a person as a member of the Council; or
- (iii) any procedural irregularity of the Council not affecting the merits of the case.

FUNCTIONS

The Council is required to make recommendations to the centre and the states on the following matters:

- (a) The taxes, cesses and surcharges levied by the centre, the states and the local bodies that would get merged in GST.
- (b) The goods and services that may be subjected to GST or exempted from GST.
- (c) Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.
- (d) The threshold limit of turnover below which goods and services may be exempted from GST.
- (e) The rates including floor rates with bands of GST.
- (f) Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.

- (g) Special provision with respect to the states of Arunachal Pradesh, Assam, Jammu and Kashmir³, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.
- (h) Any other matter relating to GST, as the Council may decide.

OTHER FUNCTIONS

In addition to the above, the Council has the following other functions:

1. The Council shall recommend the date on which the GST may be levied on petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel.
2. When there is a dispute with respect to its recommendations or their implementation, the Council shall establish a mechanism to adjudicate upon the dispute:
 - (a) between the centre and one or more states; or
 - (b) between the centre and any state or states on one side and one or more other states on the other side; or
 - (c) between two or more states.
3. The Council has to recommend the compensation to the states for loss of revenue arising on account of introduction of GST for a period of five years. Based on this recommendation, the Parliament determines the compensation. Accordingly, the Parliament enacted the law in 2017⁴.

³The Jammu and Kashmir Reorganisation Act, 2019, bifurcated the erstwhile state of Jammu and Kashmir into two separate Union territories, namely, the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

⁴The Goods and Services Tax (Compensation to States) Act, 2017.

CHAPTER 48 National Commission for SCs

The National Commission for Scheduled Castes (SCs) is a constitutional body in the sense that it is directly established by Article 338 of the Constitution. On the other hand, the other national commissions like the National Commission for Women (1992), the National Commission for Minorities (1993), the National Human Rights Commission (1993) and the National Commission for Protection of Child Rights (2007) are statutory bodies in the sense that they are established by acts of the Parliament.

● EVOLUTION

Originally, Article 338 of the Constitution provided for the appointment of a Special Officer for Scheduled Castes (SCs) and Scheduled Tribes (STs) to investigate all matters relating to the constitutional safeguards for the SCs and STs and to report to the President on their working. He/she was designated as the Commissioner for SCs and STs and assigned the said duty.

In 1978, the Government (through a Resolution) set up a non-statutory multi-member Commission for SCs and STs; the Office of Commissioner for SCs and STs also continued to exist.

In 1987, the Government (through another Resolution) modified the functions of the Commission and renamed it as the National Commission for SCs and STs¹.

¹It was made as a National Level Advisory Body to advise the Government on broad policy issues and levels of development of SCs and STs.

Later, the 65th Constitutional Amendment Act of 1990² provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs. This constitutional body replaced the Commissioner for SCs and STs as well as the Commission set up under the Resolution of 1987.

Again, the 89th Constitutional Amendment Act of 2003³ bifurcated the combined National Commission for SCs and STs into two separate bodies, namely, National Commission for Scheduled Castes (under Article 338) and National Commission for Scheduled Tribes (under Article 338-A).

The separate National Commission for SCs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his hand and seal. Their conditions of service and tenure of office are also determined by the President. Under the Rules⁴ made by the President, they hold office for a term of three years. They are not eligible for appointment for more than two terms.

● FUNCTIONS

The functions of the Commission are:

- (a) To investigate and monitor all matters relating to the constitutional and other

²The Act came into force on 12-03-1992.

³The Act came into force on 19-02-2004.

⁴The National Commission for Scheduled Castes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004.

legal safeguards for the SCs and to evaluate their working;

- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
- (c) To participate and advise on the planning process of socio-economic development of the SCs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards;
- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the SCs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the SCs as the President may specify.

REPORT

The commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.

The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also

contain the reasons for the non-acceptance of any of such recommendations.

POWERS

The Commission is vested with the power to regulate its own procedure.

The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him/her on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing summons for the examination of witnesses and documents; and
- (f) any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the SCs.

The Commission is also required to discharge similar functions with regard to the Anglo-Indian Community as it does with respect to the SCs. In other words, the Commission has to investigate all matters relating to the constitutional and other legal safeguards for the Anglo-Indian Community and report to the President upon their working⁵.

Till 2018, the commission was also required to discharge similar functions with regard to the other backward classes (OBCs). It was relieved from this responsibility by the 102nd Amendment Act of 2018.

⁵Clause 10 of Article 338 reads as follows: "In this article, references to the Scheduled Castes shall be construed as including references to the Anglo-Indian Community".

CHAPTER 49 National Commission for STs

Like the National Commission for Scheduled Castes (SCs), the National Commission for Scheduled Tribes (STs) is also a constitutional body in the sense that it is directly established by Article 338-A of the Constitution.

SEPARATE COMMISSION FOR STS

The National Commission for SCs and STs came into being consequent upon passing of the 65th Constitutional Amendment Act of 1990¹. The Commission was established under Article 338 of the Constitution with the objective of monitoring all the safeguards provided for the SCs and STs under the Constitution or other laws.

Geographically and culturally, the STs are different from the SCs and their problems are also different from those of SCs. In 1999, a new Ministry of Tribal Affairs was created to provide a sharp focus to the welfare and development of the STs. It was felt necessary that the Ministry of Tribal Affairs should co-ordinate all activities relating to the STs as it would not be administratively feasible for the Ministry of Social Justice and Empowerment to perform this role².

Hence, in order to safeguard the interests of the STs more effectively, it was proposed to set up a separate National Commission for STs by bifurcating the existing combined National Commission for SCs and STs. This was done

by passing the 89th Constitutional Amendment Act of 2003³. This Act further amended Article 338 and inserted a new Article 338-A in the Constitution.

The separate National Commission for STs came into existence in 2004. It consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his/her hand and seal. Their conditions of service and tenure of office are also determined by the President. Under the Rules⁴ made by the President, they hold office for a term of three years. They are not eligible for appointment for more than two terms.

FUNCTIONS

The functions of the Commission are:

- (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the STs and to evaluate their working;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the STs;
- (c) To participate and advise on the planning process of socio-economic development of the STs and to evaluate the progress of their development under the Union or a state;
- (d) To present to the President, annually and at such other times as it may deem

¹The Act came into force on 12-03-1992.

²The Ministry of Social Justice and Empowerment co-ordinates all activities relating to the SCs.

³The Act came into force on 19-02-2004.

⁴The National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2004.

fit, reports upon the working of those safeguards;

- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the STs; and
- (f) To discharge such other functions in relation to the protection, welfare and development and advancement of the STs as the President may specify.

OTHER FUNCTIONS

In 2005, the President specified the following other functions of the Commission in relation to the protection, welfare and development and advancement of the STs⁵:

- (i) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas
- (ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law
- (iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies
- (iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects
- (v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place
- (vi) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation
- (vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996

⁵The National Commission for the Scheduled Tribes (Specification of Other Functions) Rules, 2005.

- (viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment

REPORT

The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.

The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

The President also forwards any report of the Commission pertaining to a state government to the state governor. The governor places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

POWERS

The Commission is vested with the power to regulate its own procedure.

The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him/her on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing summons for the examination of witnesses and documents; and
- (f) any other matter which the President may determine.

The Central government and the state governments are required to consult the Commission on all major policy matters affecting the STs.

CHAPTER 50 National Commission for BCs

ESTABLISHMENT

In the Mandal case¹ judgement (1992), the Supreme Court directed the central government to constitute a permanent statutory body to examine the complaints of under-inclusion, over-inclusion or non-inclusion of any class of citizens in the list of backward classes. Accordingly, the National Commission for Backward Classes (NCBC) was set up in 1993².

Later, the 102nd Amendment Act of 2018 conferred a constitutional status on the Commission. For this purpose, the amendment inserted a new Article 338-B in the constitution. Hence, the Commission ceased to be a statutory body and became a constitutional body³.

Further, the scope of functions assigned to the Commission is also enlarged under the new dispensation. This was done in order to safeguard the interests of the socially and educationally backward classes more effectively⁴. In other words, the constitutional status of the new Commission is at par with the National Commission for Scheduled Castes (NCSC) and the National Commission for Scheduled Tribes (NCST).

¹*Indra Sawhney vs. Union of India* (1992).

²Vide the National Commission for Backward Classes Act, 1993.

³The National Commission for Backward Classes (Repeal) Act, 2018, repealed the National Commission for Backward Classes Act, 1993.

⁴The 102nd Amendment Act of 2018 inserted a new Article 342-A enabling the President to specify the socially and educationally backward classes.

The Commission consists of a chairperson, a vice-chairperson and three other members. They are appointed by the President by warrant under his/her hand and seal. Their conditions of service and tenure of office are also determined by the President. Under the Rules⁵ made by the President, they hold office for a term of three years. They are not eligible for appointment for more than two terms.

FUNCTIONS

The functions of the Commission are the following:

- (a) To investigate and monitor all matters relating to the constitutional and other legal safeguards for the socially and educationally backward classes and to evaluate their work.
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the socially and educationally backward classes.
- (c) To participate and advise on the socio-economic development of the socially and educationally backward classes and to evaluate the progress of their development under the Union or a state.
- (d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards.

⁵The National Commission for Backward Classes Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules, 2018.

- (e) To make recommendations as to the measures that should be taken by the Union or a state for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the socially and educationally backward classes.
- (f) To discharge such other functions in relation to the protection, welfare, development and advancement of the socially and educationally backward classes as the President may specify.

REPORT

The Commission presents an annual report to the President. It can also submit a report as and when it thinks necessary.

The President places all such reports before the Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

The President also forwards any report of the Commission pertaining to a state government to the state government⁶ (and not to the state governor). The government places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission.

⁶Clause 7 of Article 338B.

The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

POWERS

The Commission is vested with the power to regulate its own procedure.

The Commission, while investigating any matter or enquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him/her on oath
- (b) Requiring the discovery and production of any document
- (c) Receiving evidence on affidavits
- (d) Requisitioning any public record from any court or office
- (e) Issuing summons for the examination of witnesses and documents
- (f) Any other matter which the President may determine

The central government and the state governments are required to consult the Commission on all major policy matters affecting the socially and educationally backward classes. However, the 105th Amendment Act of 2021 exempted the state governments from this consultation with the Commission with respect to the preparation and maintenance of the list of socially and educationally backward classes for their own purposes.

CHAPTER 51

Special Officer for Linguistic Minorities

CONSTITUTIONAL PROVISIONS

Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities¹. Later, the States Reorganisation Commission (1953–55) made a recommendation in this regard. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350-B in Part XVII of the Constitution. This article contains the following provisions:

1. There should be a Special Officer for Linguistic Minorities. He is to be appointed by the President of India.
2. It would be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.

It must be noted here that the Constitution does not specify the qualifications, tenure, salaries and allowances, service conditions and procedure for removal of the Special Officer for Linguistic Minorities.

¹A linguistic minority is a group of people whose mother tongue is different from that of the majority in the state or part of a state. Thus, the linguistic minorities are determined on a state-wise basis.

COMMISSIONER FOR LINGUISTIC MINORITIES

In pursuance of the provision of Article 350-B of the Constitution, the office of the Special Officer for Linguistic Minorities was created in 1957. He/she is designated as the Commissioner for Linguistic Minorities (CLM).

The CLM has his/her headquarters in New Delhi². He/she has three regional offices at Belgaum (Karnataka), Chennai (Tamil Nadu) and Kolkata (West Bengal). Each is headed by an Assistant Commissioner.

The CLM is assisted at headquarters by Deputy Commissioner and an Assistant Commissioner. He/she maintains liaison with the State Governments and Union Territories through nodal officers appointed by them.

At the Central level, the CLM falls under the Ministry of Minority Affairs. Hence, he/she submits the annual reports or other reports to the President through the Union Minority Affairs Minister.

ROLE³

The CLM interacts with the States/UTs on all the matters pertaining to the issues concerning implementation of the Constitutional and Nationally Agreed Safeguards provided to the linguistic minorities.

²The Headquarters was established in 1957 at New Delhi. After a brief period, it was shifted to Allahabad and now, it has been shifted back to New Delhi in 2015.

³Annual Report 2021–22, Ministry of Minority Affairs, Government of India, pp. 40–41.

The CLM organisation takes up all matters relating to safeguards for linguistic minorities brought to their notice by linguistic minority individuals, groups, associations or organisations. Further, the CLM personally visits linguistic minority areas and educational institutions for an on-the-spot assessment of the status of implementation of the scheme of safeguards.

In this connection, the CLM holds discussions, when required, with the Chief Ministers and Governors of the States and the Chief Ministers and Lt. Governors of the UTs. He/she also holds discussions at the highest levels of administration viz, Chief Secretary, Principal Secretary (Education) and Principal Secretaries of the Departments entrusted with the monitoring of the implementation of the scheme of safeguards for linguistic minorities.

VISION AND MISSION

The vision and mission of the CLM are mentioned here.⁴

Vision

Streamlining and strengthening implementation machinery and mechanism for effective implementation of the Constitutional safeguards for the Linguistic Minorities, thereby ensuring protection of the rights of speakers of the minority languages so as to provide them equal opportunities for inclusive and integrated development.

Mission

To ensure that all the states/U.T.s effectively implement the Constitutional safeguards and

⁴This information is obtained from the official website of the Commissioner for Linguistic Minorities in India.

the nationally agreed scheme of safeguards for the linguistic minorities for providing them equal opportunities for inclusive development.

FUNCTIONS AND OBJECTIVES

In more detail, the functions and objectives of the CLM are as follows⁵:

Functions

1. To investigate all matters related to safeguards provided to the linguistic minorities
2. To submit to the President of India, the reports on the status of implementation of the Constitutional and the nationally agreed safeguards for the linguistic minorities
3. To monitor the implementation of safeguards through questionnaires, visits, conferences, seminars, meetings, review mechanism, etc

Objectives

1. To provide equal opportunities to the linguistic minorities for inclusive development and national integration
2. To spread awareness amongst the linguistic minorities about the safeguards available to them
3. To ensure effective implementation of the safeguards provided for the linguistic minorities in the Constitution and other safeguards, which are agreed to by the states/U.T.s
4. To handle the representations for redress of grievances related to the safeguards for linguistic minorities

⁵*Ibid.*

CHAPTER 52

Comptroller and Auditor General of India

The Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). He/she is the head of the Indian Audit and Accounts Department¹. He/she is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state. His/her duty is to uphold the Constitution of India and laws of Parliament in the field of financial administration. This is the reason why Dr. B.R. Ambedkar said that the CAG shall be the most important Officer under the Constitution of India². He/she is one of the bulwarks of the democratic system of government in India; the others being the Supreme Court, the Election Commission and the Union Public Service Commission.

APPOINTMENT AND TERM

The CAG is appointed by the President of India by a warrant under his/her hand and seal. The CAG, before taking over his/her office, makes and subscribes before the President an oath or affirmation:

1. to bear true faith and allegiance to the Constitution of India;
2. to uphold the sovereignty and integrity of India;
3. to duly and faithfully and to the best of his/her ability, knowledge and judgement perform the duties of his/her

¹The Indian Audit and Accounts Department was created during the British rule in 1753.

²*Constituent Assembly Debates*, Volume VIII, p. 405.

office without fear or favour, affection or ill-will; and

4. to uphold the Constitution and the laws.

He/she holds office for a period of six years or upto the age of 65 years, whichever is earlier^{2a}. He/she can resign any time from his/her office by addressing the resignation letter to the President. He/she can also be removed by the President on same grounds and in the same manner as a judge of the Supreme Court. In other words, he/she can be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity.

INDEPENDENCE

The Constitution has made the following provisions to safeguard and ensure the independence of CAG:

1. He/she is provided with the security of tenure. He/she can be removed by the President only in accordance with the procedure mentioned in the Constitution. Thus, he/she does not hold office till the pleasure of the President, though he/she is appointed by him/her.
2. He/she is not eligible for further office, either under the Government of India or of any state, after he/she ceases to hold his/her office.
3. His/her salary and other service conditions are determined by the Parliament.

^{2a}As per the CAG's (Duties, Powers and Conditions of Service) Act, 1971.



According to the Act made by the Parliament, his/her salary is equal to that of a judge of the Supreme Court³.

4. Neither his/her salary nor his/her rights in respect of leave of absence, pension or age of retirement can be altered to his/her disadvantage after his/her appointment.
5. The conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the President after consultation with the CAG.
6. The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the Consolidated Fund of India. Thus, they are not subject to the vote of Parliament.

DUTIES AND POWERS

The Constitution (Article 149) authorises the Parliament to prescribe the duties and powers of the CAG in relation to the accounts of the Union and of the states and of any other authority or body. Accordingly, the Parliament enacted the CAG's (Duties, Powers and Conditions of Service) Act, 1971.

The duties and functions of the CAG as laid down by the Parliament and the Constitution are:

1. He/she audits the accounts related to all expenditure from the Consolidated Fund of India, consolidated fund of each state and consolidated fund of each union territory having a Legislative Assembly.
2. He/she audits all transactions relating to the Contingency Fund of India and the Public Account of India as well as the contingency fund of each state and the public account of each state.
3. He/she audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and state governments.

4. He/she audits the receipts and expenditure of all bodies and authorities substantially financed from the central or state revenues.
5. He/she audits the accounts of all bodies and authorities receiving grants and loans from the central and state government for specific purposes.
6. He/she audits all receipts of the centre and states and ensures that the rules and procedures in this regard are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
7. He/she audits the accounts of all stores and stock kept in all the offices and departments of the central and state governments.
8. He/she audits the accounts of all Government Companies in accordance with the provisions of the Companies Act.
9. He/she audits the accounts of all Corporations whose statutes provide for audit by him/her.
10. He/she audits the accounts of any other body or authority when requested by the President or Governor. For example, the audit of local bodies.
11. He/she advises the President with regard to prescription of the form in which the accounts of the Centre and the states shall be kept (Article 150).
12. He/she submits audit reports relating to the accounts of the Centre to President, who shall, in turn, place them before both the Houses of Parliament (Article 151).
13. He/she submits the audit reports relating to the accounts of a state to governor, who shall, in turn, place them before the state legislature (Article 151).
14. He/she ascertains and certifies the net proceeds of any tax or duty (Article 279). His/her certificate is final. The 'net proceeds' means the proceeds of a tax or a duty minus the cost of collection.
15. He/she acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

³In 2018, the salary of a judge of the Supreme Court had been fixed at ₹2.50 lakh per month.



16. He/she compiles and maintains the accounts of state governments. In 1976, he/she was relieved of his/her responsibilities with regard to the compilation and maintenance of accounts of the Central Government due to the separation of accounts from audit, that is, departmentalisation of accounts.

The CAG, in connection with the performance of his/her audit duties, has the following powers:

- (i) To inspect any office or department which is subject to his/her audit
- (ii) To examine all transactions and question the person in charge of the office or department
- (iii) To call for any records, papers and documents from any audited entity
- (iv) To decide the extent and manner of audit

ROLE

The role of CAG is to uphold the Constitution of India and the laws of Parliament in the field of financial administration. The accountability of the executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG. The CAG submits three audit reports to the President—audit report on appropriation accounts⁴, audit report on finance accounts and audit report on public undertakings. The President lays these reports before both the Houses of Parliament. After this, the Public Accounts Committee examines them and reports its findings to the Parliament.

According to the above Act of 1971, the CAG has 'to ascertain whether moneys shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority

⁴The appropriation accounts compare the actual expenditure with the expenditure sanctioned by the Parliament through the Appropriation Act, while the finance accounts show the annual receipts and disbursements of the Union government.

that governs it'. In addition to this legal and regulatory audit, the CAG can also conduct the propriety audit, that is, he/she can look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure. However, unlike the legal and regulatory audit, which is obligatory on the part of the CAG, the propriety audit is discretionary.

Further, in 2006, the Ministry of Finance, Government of India, issued an Office Memorandum regarding performance audit by the CAG. The Memorandum clarified that the performance audit falls within the scope of audit by the CAG. The performance audit is concerned with the audit of economy, efficiency and effectiveness in the receipt and application of public funds. It is a comprehensive appraisal of the progress and efficiency of the execution of development programmes. In this audit, an attempt is made (i) to assess and appraise to what extent the social and economic objectives sought to be achieved have been achieved and at what cost; (ii) to examine how far the agency of department is adequately discharging its financial responsibilities and (iii) to ascertain whether the schemes are being executed and their operations conducted economically.

The CAG has more freedom with regard to audit of expenditure than with regard to audit of receipts, stores and stock. "Whereas in relation to expenditure he/she decides the scope of audit and frames his/her own audit codes and manuals, he/she has to proceed with the approval of the executive government in relation to rules for the conduct of the other audits."⁵

The secret service expenditure is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his/her authority.

⁵Wattal, P.K., *Parliamentary Financial Control in India*, Second Edition. Bombay: Minerva Book Shop, 1962, p. 235.

The Constitution of India visualises the CAG to be Comptroller as well as Auditor General. However, in practice, the CAG is fulfilling the role of an Auditor-General only and not that of a Comptroller. In other words, 'the CAG has no control over the issue of money from the consolidated fund and many departments are authorised to draw money by issuing cheques without specific authority from the CAG, who is concerned only at the audit stage when the expenditure has already taken place'⁶. In this respect, the CAG of India differs totally from the CAG of Britain who has powers of both Comptroller as well as Auditor General. In other words, in Britain, the executive can draw money from the public exchequer only with the approval of the CAG.

CAG AND CORPORATIONS

The role of CAG in the auditing of public corporations is limited. Broadly speaking, his/her relationship with the public corporations falls into the following three categories:

- (i) Some corporations are audited totally and directly by the CAG.
- (ii) Some other corporations are audited by private professional auditors who are appointed by the Central Government in consultation with the CAG. If necessary, the CAG can conduct supplementary audit.
- (iii) Some other corporations are totally subjected to private audit. In other words, their audit is done exclusively by private professional auditors and the CAG does not come into the picture at all. They submit their annual reports and accounts directly to the Parliament.

The role of the CAG in the auditing of Government companies is also limited. They are audited by private auditors who are appointed by the Government on the advice of the CAG. The CAG can also undertake supplementary audit or test audit of such companies.

⁶D.D. Basu, *Introduction to the Constitution of India*, Wadhwa, 19th Edition, 2001, p. 198.

APPLEBY'S CRITICISM

Paul H Appleby (an American scholar of Public Administration), in his two reports on Indian Administration, was very critical of the role of CAG and attacked the significance of CAG's work⁷. He also suggested that the CAG should be relieved of the responsibility of audit. In other words, he recommended the abolition of the office of CAG. His points of criticism of Indian audit are as follows:

1. The function of the CAG in India, is in a large measure, an inheritance from the colonial rule.
2. The CAG is today a primary cause of widespread and paralysing unwillingness to decide and to act. Auditing has a repressive and negative influence.
3. The Parliament has a greatly exaggerated notion of the importance of auditing to Parliamentary responsibility, and so has failed to define the functions of the CAG as the Constitution contemplated it would do.
4. The CAG's function is not really a very important one. Auditors do not know and cannot be expected to know very much about good administration; their prestige is highest with others who do not know much about administration.
5. Auditors know what is auditing, which is not administration; it is a necessary, but a highly pedestrian function with a narrow perspective and a very limited usefulness.
6. A deputy secretary in the department knows more about the problems in his/her department than the CAG and his/her entire staff.

CHALLENGES

The Second Administrative Reforms Commission of India (2005–2009) has identified the challenges before the external audit conducted

⁷The two reports are: *Public Administration in India* (1953) and *Re-examination of India's Administrative System*, 1956.



by the CAG and explained them in the following way⁸:

There is no doubt that external audit by the CAG has contributed a great deal in improving the financial management in the country keeping in view the large number of Inspection Reports issued, Audit Reports presented to the Parliament and the State Legislatures and the recoveries made at the instance of audit. In its Reports, Audit raises many important issues relating inter-alia to weak budgetary controls, deficiencies in revenue collection, wastage of public resources, inappropriate accounting, poor returns on investments, diversion of funds, system deficiencies and numerous instances of poor management of public resources, etc.

There is, however, a feeling that the impact and effectiveness of external audit could be further enhanced. Some of the factors and perceptions, which are impeding the effectiveness of external audit by CAG are given below:

- (i) Detailed examination of paras included in the Audit Reports by Public Accounts Committee (PAC) is barely about 15-20 against the total number of 1000 to 1500 paras included in the CAG's reports submitted to the Parliament every year. The Ministries/Departments take only those audit paras seriously which come up for discussions in the PAC.
- (ii) The Ministries/Departments are supposed to submit Action Taken Notes on the paras not discussed. Such Action taken Notes are largely formal rather than substantive.
- (iii) In the State Legislatures, there is a huge pendency of Audit Paras to be examined by State PACs. Some of the pending paras are 10 to 20 years old. Delay in examination of matters brought out in the Reports reduces their relevance.
- (iv) Thousands of inspection reports containing a huge number of observations

are lying unattended in the State and Union Government Departments. Many of these paras have revenue implications. There is hardly any accountability for not taking timely action on audit observations.

- (v) There is a feeling that the CAG's reports are sometimes not timely because there is substantial time gap between occurrence of an irregularity and its reporting by Audit. It reviews programmes after these have run for a few years. CAG's audit itself is post facto and by the time, the process of auditing and reporting is completed, its findings and recommendations may be too late for corrective action. Many transaction audit comments relate to earlier years and not to the year of the Audit Report.
- (vi) Audit findings are based exclusively on documents and files. Many a times, the situation on the ground is quite different from what is reflected in the papers. There is practically no physical verification to supplement or validate the audit findings.
- (vii) There is a feeling that external audit reports tend to be unduly negative and their focus is on irregularities and fault-finding. Audit does not always recognize the practical constraints under which the Government/Government Agencies function.
 - (a) Audit often does not discriminate between errors arising out of bonafide intentions/malafide intentions.
 - (b) Government Agencies are handicapped by unknown/unforeseen problems, delays beyond their control and unexpected hurdles. The auditors, on the other hand, have the benefit of hindsight. Audit as such could act as a dampener against new initiatives and risk taking.
- (viii) Audit Reports are not always presented in a sufficiently constructive manner, as they often do not delve into the

⁸Second Administrative Reforms Commission, Government of India, Report on Strengthening Financial Management Systems, 2009, pp. 141-143.

causes of the problems and how to address them.

- (a) Reporting each year a large number of problems which are already known and which are not being addressed does not add value. Audit must therefore identify systemic problems.
- (b) Findings are at times not focused and are in the nature of scattered observations. A macro-level view of the functioning of a department is seldom available.
- (c) Audit does not give due credit for good performance.
- (ix) The relationship between the auditor and auditee is not always harmonious. Generally, interaction is confined mainly to the lower levels.
 - (a) Audit is viewed as a system for policing Government Organisations. The view that audit is a valuable aid to management is normally missing.
 - (b) There is poor/inadequate response to external audit bordering sometimes on indifference on the part

of Government officials, which seriously reduces the effectiveness of audit.

- (x) Though Audit Committees comprising representatives of audit and government agencies have been set up to review the departmental action taken on inspection reports/recommendations, their functioning is not satisfactory.
- (xi) There is a lack of informed media coverage of CAG's reports on Union/State Governments. The extent of the public interface between the auditors and civil society is poor. Inspection reports are not in the public domain.
- (xii) There is inadequate synergy/coordination between external audit and internal audit.
- (xiii) External audit does not provide audit assurance on the fair presentation of financial statements of the Government in accordance with stated accounting principles and policies.
- (xiv) There is rarely any audit of grants and loans to NGOs.

Table 52.1 Articles Related to Comptroller and Auditor-General of India at a Glance

Article No	Subject matter
148.	Comptroller and Auditor-General of India
149.	Duties and powers of the Comptroller and Auditor-General
150.	Form of accounts of the Union and of the States
151.	Audit reports

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CHAPTER 53

Attorney General of India

The Constitution (Article 76) has provided for the office of the Attorney General for India¹. He/she is the highest law officer in the country.

APPOINTMENT AND TERM

The Attorney General (AG) is appointed by the President. He/she must be a person, who is qualified to be appointed as a judge of the Supreme Court. In other words, he/she must be a citizen of India and must have been a judge of some high court for five years or an advocate of some high court for ten years or an eminent jurist, in the opinion of the President.

The term of office of the AG is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his/her removal. He/she holds office during the pleasure of the President. This means that he/she may be removed by the President at any time. He/she may also quit office by submitting resignation to the President. Conventionally, he/she resigns when the government (council of ministers) resigns or is replaced, as he/she is appointed on its advice.

The remuneration of the AG is not fixed by the Constitution. He/she receives such remuneration as the President may determine.

¹Article 76 of Chapter 1 (The Executive) in Part V (The Union) of the Constitution deals with the office of the Attorney General of India.

DUTIES AND FUNCTIONS

As the chief law officer of the Government of India, the duties of the AG include the following:

1. To give advice to the Government of India upon such legal matters, which are referred to him/her by the President.
2. To perform such other duties of a legal character that are assigned to him/her by the President.
3. To discharge the functions conferred on him/her by the Constitution or any other law.

The President has assigned the following duties to the AG²:

1. To appear on behalf of the Government of India in all cases in the Supreme Court in which the Government of India is concerned.
2. To represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
3. To appear (when required by the Government of India) in any high court in any case in which the Government of India is concerned.

RIGHTS AND LIMITATIONS

In the performance of his/her official duties, the AG has the right of audience in all courts in the territory of India. Further, he/she has

²Notification No. F. 43-50C, 26 January 1950, *Gazette of India*, Extraordinary, Volume VII, pp. 33-34.

the right to speak and to take part in the proceedings of both the Houses of Parliament or their joint sitting and any committee of the Parliament of which he/she may be named a member, but without a right to vote. He/she also enjoys all the privileges and immunities that are available to a member of Parliament.

In order to avoid any complication and conflict of duty, the following limitations are placed on the AG:

1. He/she should not advise or hold a brief against the Government of India.
2. He/she should not advise or hold a brief in cases in which he/she is called upon to advise or appear for the Government of India.
3. He/she should not defend accused persons in criminal prosecutions without the permission of the Government of India.
4. He/she should not accept appointment as a director in any company or corporation without the permission of the Government of India.
5. He/she should not advise any ministry or department of Government of India or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received

through the Ministry of Law and Justice, Department of Legal Affairs^{2a}.

However, the AG is not a full-time counsel for the Government. He/she does not fall in the category of government servants. Further, he/she is not debarred from private legal practice.

SOLICITOR GENERAL OF INDIA

In addition to the AG, there are other law officers of the Government of India. They are the solicitor general of India and additional solicitor general of India. They assist the AG in the fulfilment of his/her official responsibilities. It should be noted here that only the office of the AG is created by the Constitution. In other words, Article 76 does not mention about the solicitor general and additional solicitor general.

The AG is not a member of the Central cabinet. There is a separate law minister in the Central cabinet to look after legal matters at the government level³.

^{2a}Inserted vide G.S.R..... (E) dated 25th February, 2005.

³During the prime ministership of Jawaharlal Nehru, a proposal was put forward by the Central government that the office of the Attorney General be merged with the office of the law minister. It did not materialise.

Table 53.1 Articles Related to Attorney-General of India at a Glance

Article No.	Subject-matter
76.	Attorney-General of India
88.	Rights of Attorney-General as respects the Houses of Parliament and its Committee
105.	Powers, privileges and immunities of Attorney-General

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CHAPTER 54

Advocate General of the State

The Constitution (Article 165) has provided for the office of the advocate general for the states.¹ He/she is the highest law officer in the state. Thus he/she corresponds to the Attorney General of India.

APPOINTMENT AND TERM

The advocate general is appointed by the governor. He/she must be a person who is qualified to be appointed as a judge of a high court. In other words, he/she must be a citizen of India and must have held a judicial office² for ten years or been an advocate of a high court for ten years³.

The term of office of the advocate general is not fixed by the Constitution. Further, the Constitution does not contain the procedure and grounds for his/her removal. He/she holds office during the pleasure of the governor. This means that he/she may be removed by the governor at any time. He/she may also quit his/her office by submitting his/her

resignation to the governor. Conventionally, he/she resigns when the government (council of ministers) resigns or is replaced, as he/she is appointed on its advice.

The remuneration of the advocate general is not fixed by the Constitution. He/she receives such remuneration as the governor may determine.

DUTIES AND RIGHTS

As the chief law officer of the government in the state, the duties of the advocate general include the following:

1. To give advice to the government of the state upon such legal matters which are referred to him/her by the governor.
2. To perform such other duties of a legal character that are assigned to him/her by the governor.
3. To discharge the functions conferred on him/her by the Constitution or any other law.

The advocate general has the right to speak and to take part in the proceedings of both the Houses of the state legislature or any committee of the state legislature of which he/she may be named a member, but without a right to vote. He/she also enjoys all the privileges and immunities that are available to a member of the state legislature.

¹Article 165 of Chapter 2 (The Executive) in Part VI (The States) of the Constitution deals with the office of the advocate general of the state.

²Judicial office means an office within the judicial service of the state.

³Unlike the Supreme Court, the Constitution makes no provision for appointment of an eminent jurist as a judge of high court.

Table 54.1 Articles Related to Advocate-General of the state at a Glance

Article No.	Subject-matter
165.	Advocate-General of the State
177.	Rights of Advocate-General as respects the Houses of State Legislature and its Committee
194.	Powers, privileges and immunities of Advocate-General

**Table 54.2** Articles Related to Constitutional Bodies at a Glance

Article No.	Constitutional Bodies
76.	Attorney-General of India
148.	Comptroller and Auditor-General of India
165.	Advocate-General of the State
243-I.	State Finance Commission
243-K.	State Election Commission
243ZD.	District Planning Committee
243ZE.	Metropolitan Planning Committee
263.	Inter-State Council
279A.	Goods and Services Tax Council
280.	Finance Commission
307.	Inter-State Trade and Commerce Commission
315.	Union Public Service Commission and State Public Service Commission
324.	Election Commission
338.	National Commission for Scheduled Castes
338A.	National Commission for Scheduled Tribes
338B.	National Commission for Backward Classes
339.	Scheduled Areas and Scheduled Tribes Commission
340.	Backward Classes Commission
344.	Official Language Commission and Official Language Committee of Parliament
350B.	Special Officer for Linguistic Minorities

CHAPTER 55

Constitutional Prescriptions

COMPOSITIONS

Table 55.1 Constitutional Prescriptions with Respect to Compositions

Sl. No.	Institutions/Bodies	Composition	Related Article
1.	Central Council of Ministers	Prime Minister and other Ministers	74
2.	Parliament	President, Rajya Sabha and Lok Sabha	79
3.	Rajya Sabha	250 Members	80
4.	Lok Sabha	550 Members	81
5.	Supreme Court	Chief Justice of India and other Judges	124
6.	State Council of Ministers	Chief Minister and other Ministers	163
7.	State Legislature	Governor, Legislative Council and Legislative Assembly or Governor and Legislative Assembly	168
8.	Legislative Assembly	Maximum 500 Members and minimum 60 Members	170
9.	Legislative Council	Maximum one-third of the total number of members in the State Legislative Assembly and minimum 40 members	171
10.	High Court	Chief Justice and other Judges	216
11.	Panchayats	Determined by the State Legislature	243C
12.	State Finance Commission	Determined by the State Legislature	243-I
13.	State Election Commission	State Election Commissioner	243K
14.	Municipalities	Determined by the State Legislature	243R
15.	District Planning Committee	Determined by the State Legislature	243ZD
16.	Metropolitan Planning Committee	Determined by the State Legislature	243ZE
17.	Inter-State Council	Determined by the President	263
18.	Goods and Services Tax Council	Chairperson, Vice-Chairperson and Members	279A



Sl. No.	Institutions/Bodies	Composition	Related Article
19.	Finance Commission	Chairman and four other Members	280
20.	Inter-State Trade and Commerce Commission	Determined by the Parliament	307
21.	Union Public Service Commission	Chairman and other Members	316
22.	State Public Service Commission	Chairman and other Members	316
23.	Joint State Public Service Commission	Chairman and other Members	316
24.	Central Administrative Tribunal	Determined by the Parliament	323A
25.	State Administrative Tribunal	Determined by the Parliament	323A
26.	Tribunals for other matters	Determined by the appropriate Legislature (Parliament or State Legislature)	323B
27.	Election Commission	Chief Election Commissioner and other Election Commissioners	324
28.	National Commission for SCs	Chairperson, Vice-Chairperson and three other Members	338
29.	National Commission for STs	Chairperson, Vice-Chairperson and three other Members	338A
30.	National Commission for BCs	Chairperson, Vice-Chairperson and three other Members	338B
31.	Scheduled Areas and Scheduled Tribes Commission	Determined by the President	339
32.	Backward Classes Commission	Determined by the President	340
33.	Official Language Commission	Chairman and other Members	344
34.	Official Language Committee of Parliament	Thirty Members (twenty from Lok Sabha and ten from Rajya Sabha)	344
35.	Legislative Assembly of Nagaland	Minimum 46 members	371A
36.	Legislative Assembly of Sikkim	Minimum 30 members	371F
37.	Legislative Assembly of Mizoram	Minimum 40 members	371G
38.	Legislative Assembly of Arunachal Pradesh	Minimum 30 members	371H
39.	Legislative Assembly of Goa	Minimum 30 members	371-I
40.	Tribes Advisory Council	Maximum 20 members	Fifth Schedule
41.	District Council of an autonomous district	Maximum 30 members	Sixth Schedule



APPOINTMENTS

Table 55.2 Constitutional Prescriptions with Respect to Appointments

Sl. No.	Functionaries/Bodies	Appointed by/Elected by	Related Article
1.	President	Electoral College consisting of the elected MPs and MLAs	54
2.	Vice-President	Electoral college consisting of the MPs	66
3.	Prime Minister	President	75
4.	Central Ministers	President	75
5.	Attorney-General of India	President	76
6.	Members of the Rajya Sabha	Elected MLAs/President	80
7.	Members of the Lok Sabha	Voters	81
8.	Deputy Chairman of the Rajya Sabha	Members of the Rajya Sabha	89
9.	Speaker and Deputy Speaker of the Lok Sabha	Members of the Lok Sabha	93
10.	Judges of the Supreme Court	President	124
11.	Comptroller and Auditor-General of India	President	148
12.	Governor of a State	President	155
13.	Chief Minister	Governor	164
14.	State Ministers	Governor	164
15.	Advocate General of a State	Governor	165
16.	Members of the State Legislative Assemblies	Voters	170
17.	Members of the State Legislative Councils	Local Bodies/Graduates/Teachers/MLAs/Governor	171
18.	Speaker and Deputy Speaker of the State Legislative Assembly	Members of the State Legislative Assembly	178
19.	Chairman and Deputy Chairman of the State Legislative Council	Members of the State Legislative Council	182
20.	Judges of the High Courts	President	217
21.	District Judges	Governor	233
22.	Administrator of a Union Territory	President	239
23.	Chief Minister of NCT of Delhi	President	239AA
24.	Ministers of NCT of Delhi	President	239AA
25.	Members of the Panchayats	Voters	243C



Sl. No.	Functionaries/Bodies	Appointed by/Elected by	Related Article
26.	State Election Commissioner	Governor	243K
27.	Members of the Municipalities	Voters	243R
28.	Chairman and Members of the Finance Commission	President	280
29.	Chairman and Members of the UPSC	President	316
30.	Chairman and Members of a SPSC	Governor	316
31.	Chairman and Members of a JSPSC	President	316
32.	Chief Election Commissioner and other Election Commissioners	President	324
33.	Chairperson, Vice-Chairperson and Members of the National Commission for SCs	President	338
34.	Chairperson, Vice-Chairperson and Members of the National Commission for STs	President	338A
35.	Chairperson, Vice-Chairperson and Members of the National Commission for BCs	President	338B
36.	Scheduled Areas and Scheduled Tribes Commission	President	339
37.	Backward Classes Commission	President	340
38.	Chairman and Members of the Official Language Commission	President	344
39.	Members of the Official Language Committee of Parliament	Members of the Lok Sabha and Members of the Rajya Sabha	344
40.	Special Officer for Linguistic Minorities	President	350B
41.	Members of the District Council of an autonomous district	Voters/Governor	Sixth Schedule
42.	Commission on the Administration of Autonomous Districts and Autonomous Regions	Governor	Sixth Schedule

AGE

Table 55.3 Constitutional Prescriptions with Respect to Age

Sl. No.	Election/Appointment/Retirement/Others	Prescribed Age	Related Article
1.	Election of the President	35 years	58
2.	Election of the Vice-President	35 years	66
3.	Election of a member of the Rajya Sabha	30 years	84
4.	Election of a member of the Lok Sabha	25 years	84

(Contd.)



Sl. No.	Election/Appointment/Retirement/Others	Prescribed Age	Related Article
5.	Retirement of a Judge of the Supreme Court	65 years	124
6.	Appointment of the Governor of a State	35 years	157
7.	Election of a member of the State Legislative Council	30 years	173
8.	Election of a member of the State Legislative Assembly	25 years	173
9.	Retirement of a Judge of the High Courts	62 years	217
10.	Election of a member of the Panchayats	21 years	243F
11.	Election of a member of the Municipalities	21 years	243V
12.	Retirement of a member of the UPSC	65 years	316
13.	Retirement of a member of a SPSC	62 years	316
14.	Retirement of a member of a JSPSC	62 years	316
15.	Registration as a voter in the electoral roll	18 years	326

OATHS

Table 55.4 Constitutional Prescriptions with Respect to Oaths

Sl. No.	Functionaries	Oath Administered by (or) Made and Subscribed Before	Related Article
1.	President	Before the Chief Justice of India (or) the senior most Judge of the Supreme Court available	60
2.	Vice-President	Before the President (or) some person appointed in that behalf by him	69
3.	Union Ministers	By the President	75
4.	Candidate for election to the Parliament	Before some person authorized in that behalf by the Election Commission	84
5.	Members of the Parliament	Before the President (or) some person appointed in that behalf by him	99
6.	Judges of the Supreme Court	Before the President (or) some person appointed in that behalf by him	124
7.	Comptroller and Auditor-General of India	Before the President (or) some person appointed in that behalf by him	148
8.	Governor of a State	Before the Chief Justice of the State High Court (or) the senior most Judge of the State High Court available	159
9.	State Ministers	By the Governor of the State	164



Sl. No.	Functionaries	Oath Administered by (or) Made and Subscribed Before	Related Article
10.	Candidate for election to the State Legislature	Before some person authorized in that behalf by the Election Commission	173
11.	Members of the State Legislature	Before the Governor of the State (or) some person appointed in that behalf by him	188
12.	Judges of the High Courts	Before the Governor of the State (or) some person appointed in that behalf by him	219

TERM

Table 55.5 Constitutional Prescriptions with Respect to Term

Sl. No.	Functionaries/Institutions	Term/Duration	Related Article
1.	President	5 years	56
2.	Vice-President	5 years	67
3.	Prime Minister	During the pleasure of the President	75
4.	Central Ministers	During the pleasure of the President	75
5.	Attorney-General of India	During the pleasure of the President	76
6.	Rajya Sabha	Continuing Chamber (one-third of its members retire every second year)	83
7.	Lok Sabha	5 years	83
8.	Comptroller and Auditor-General of India	Determined by the Parliament	148
9.	Governor	5 years (or) during the pleasure of the President	156
10.	Chief Minister	During the pleasure of the Governor	164
11.	State Ministers	During the pleasure of the Governor	164
12.	Advocate-General of a State	During the pleasure of the Governor	165
13.	State Legislative Assembly	5 years	172
14.	State Legislative Council	Continuing Chamber (one-third of its members retire every second year)	172
15.	Chief Minister of NCT of Delhi	During the pleasure of the President	239AA
16.	Ministers of NCT of Delhi	During the pleasure of the President	239AA
17.	Panchayats	5 years	243E
18.	State Election Commissioner	Determined by the Governor (subject to the law of the State Legislature)	243K
19.	Municipalities	5 years	243U

(Contd.)



Sl. No.	Functionaries/Institutions	Term/Duration	Related Article
20.	Board of Directors of a co-operative Society	5 years	243ZJ
21.	Chairman and Members of the UPSC	6 years	316
22.	Chairman and Members of the SPSC	6 years	316
23.	Chairman and Members of the JSPSC	6 years	316
24.	Chief Election Commissioner and other election Commissioners	Determined by the President (subject to the law of Parliament)	324
25.	Chairperson, Vice-Chairperson and Members of the National Commission for SCs	Determined by the President (subject to the law of Parliament)	338
26.	Chairperson, Vice-Chairperson and Members of the National Commission for STs	Determined by the President (subject to the law of Parliament)	338A
27.	Chairperson, Vice-Chairperson and Members of the National Commission for BCs	Determined by the President (subject to the law of Parliament)	338B
28.	Elected Members of the District Council of an autonomous district	5 years	Sixth Schedule
29.	Nominated Members of the District Council of an autonomous district	During the pleasure of the Governor	Sixth Schedule

SALARIES

Table 55.6 Constitutional Prescriptions with Respect to Salaries

Sl. No.	Functionaries	Salary Determined by	Related Article
1.	President	Parliament	59
2.	Vice-President	No Salary (Entitled to the Salary of the Chairman of the Rajya Sabha)	64
3.	Prime Minister	Parliament	75
4.	Central Ministers	Parliament	75
5.	Attorney-General of India	President	76
6.	Chairman and Deputy Chairman of the Rajya Sabha	Parliament	97
7.	Speaker and Deputy Speaker of the Lok Sabha	Parliament	97
8.	Members of Parliament (Both Rajya Sabha and Lok Sabha)	Parliament	106
9.	Judges of the Supreme Court	Parliament	125
10.	Comptroller and Auditor-General of India	Parliament	148



Sl. No.	Functionaries	Salary Determined by	Related Article
11.	Governor of a State	Parliament	158
12.	Chief Minister	State Legislature	164
13.	State Ministers	State Legislature	164
14.	Advocate-General of a State	Governor	165
15.	Speaker and Deputy Speaker of the State Legislative Assembly	State Legislature	186
16.	Chairman and Deputy Chairman of the State Legislative Council	State Legislature	186
17.	Members of the State Legislature (Both Assembly and Council)	State Legislature	195
18.	Judges of the High Courts	Parliament	221
19.	State Election Commissioner	Governor (subject to the law of the State Legislature)	243K
20.	Chairman and Members of the UPSC	President	318
21.	Chairman and Members of a SPSC	Governor	318
22.	Chairman and Members of a JSPSC	President	318
23.	Chief Election Commissioner and other Election Commissioners	President (subject to the law of Parliament)	324
24.	Chairperson, Vice-Chairperson and Members of the National Commission for SCs	President (subject to the law of Parliament)	338
25.	Chairperson, Vice-Chairperson and Members of the National Commission for STs	President (subject to the law of Parliament)	338A
26.	Chairperson, Vice-Chairperson and Members of the National Commission for BCs	President (subject to the law of Parliament)	338B

RESIGNATIONS

Table 55.7 Constitutional Prescriptions with Respect to Resignations

Sl. No.	Functionaries	Resignation Submitted to	Related Article
1.	President	Vice-President	56
2.	Vice-President	President	67
3.	Deputy Chairman of the Rajya Sabha	Chairman of the Rajya Sabha	90
4.	Speaker of the Lok Sabha	Deputy Speaker of the Lok Sabha	94
5.	Deputy Speaker of the Lok Sabha	Speaker of the Lok Sabha	94

(Contd.)



Sl. No.	Functionaries	Resignation Submitted to	Related Article
6.	Members of the Rajya Sabha	Chairman of the Rajya Sabha	101
7.	Members of the Lok Sabha	Speaker of the Lok Sabha	101
8.	Judges of the Supreme Court	President	124
9.	Governor of a State	President	156
10.	Speaker of the State Legislative Assembly	Deputy Speaker of the State Legislative Assembly	179
11.	Deputy Speaker of the State Legislative Assembly	Speaker of the State Legislative Assembly	179
12.	Chairman of the State Legislative Council	Deputy Chairman of the State Legislative Council	183
13.	Deputy Chairman of the State Legislative Council	Chairman of the State Legislative Council	183
14.	Members of the State Legislative Assembly	Speaker of the State Legislative Assembly	190
15.	Members of the State Legislative Council	Chairman of the State Legislative Council	190
16.	Judges of the High Courts	President	217
17.	Chairman and Members of the UPSC	President	316
18.	Chairman and Members of a SPSC	Governor	316
19.	Chairman and Members of a JSPSC	President	316

REMOVALS AND DISSOLUTIONS

Table 55.8 Constitutional Prescriptions with Respect to Removals/Dissolutions

Sl. No.	Functionaries/Bodies	Removed by/Dissolved by	Related Article
1.	President	Parliament	61
2.	Vice-President	Parliament	67
3.	Rajya Sabha	Not subject to dissolution	83
4.	Lok Sabha	President	85
5.	Deputy Chairman of the Rajya Sabha	Rajya Sabha	90
6.	Speaker and Deputy Speaker of the Lok Sabha	Lok Sabha	94
7.	Judges of the Supreme Court	President (on the recommendation of the Parliament)	124



Sl. No.	Functionaries/Bodies	Removed by/Dissolved by	Related Article
8.	Comptroller and Auditor-General of India	President (on the recommendation of the Parliament)	148
9.	State Legislative Council	Not subject to dissolution	172
10.	State Legislative Assembly	Governor	174
11.	Speaker and Deputy Speaker of the State Legislative Assembly	State Legislative Assembly	179
12.	Chairman and Deputy Chairman of the State Legislative Council	State Legislative Council	183
13.	Judges of the High Courts	President (on the recommendation of the Parliament)	217
14.	State Election Commissioner	President (on the recommendation of the Parliament)	243K
15.	Chairman and Members of the UPSC, a JSPSC and a SPSC	President	317
16.	Chief Election Commissioner	President (on the recommendation of the Parliament)	324
17.	Election Commissioners or Regional Commissioners	President (on the recommendation of the Chief Election Commissioner)	324
18.	District Council of an autonomous district and Regional Council of an Autonomous Region	Governor (on the recommendation of the Commission on the Administration of Autonomous Districts and autonomous regions)	Sixth Schedule

SUBMISSION OF REPORTS

Table 55.9 Constitutional Prescriptions with Respect to Submission of Reports

Sl. No.	Functionaries/Bodies	Report Submitted to	Related Article
1.	Comptroller and Auditor-General of India	President (related to the Union) and Governor (related to the State)	151
2.	State Finance Commission	Governor	243-I
3.	Chairperson of the District Planning Committee	State Government	243ZD
4.	Chairperson of the Metropolitan Planning Committee	State Government	243ZE
5.	Finance Commission	President	280

(Contd.)



Sl. No.	Functionaries/Bodies	Report Submitted to	Related Article
6.	UPSC	President	323
7.	SPSC	Governor	323
8.	JSPSC	Governor	323
9.	National Commission for SCs	President	338
10.	National Commission for STs	President	338A
11.	National Commission for BCs	President	338B
12.	Scheduled Areas and Scheduled Tribes Commission	President	339
13.	Backward Classes Commission	President	340
14.	Official Language Commission	President	344
15.	Official Language Committee of Parliament	President	344
16.	Special Officer for Linguistic Minorities	President	350B
17.	Governor	President (regarding the failure of constitutional machinery in the State)	356
18.	Governor	President (regarding the administration of Scheduled Areas in the State)	Fifth Schedule
19.	Commission on the Administration of Autonomous Districts and Autonomous Regions	Governor	Sixth Schedule

In this Part...

- 56. NITI Aayog
- 57. National Human Rights Commission
- 58. State Human Rights Commission
- 59. National Commission for Women
- 60. National Commission for Protection of Child Rights
- 61. National Commission for Minorities
- 62. Central Information Commission
- 63. State Information Commission

- 64. Central Vigilance Commission
- 65. Central Bureau of Investigation
- 66. Lokpal and Lokayuktas
- 67. National Investigation Agency
- 68. National Disaster Management Authority
- 69. Bar Council of India
- 70. Law Commission of India
- 71. Delimitation Commission of India

CHAPTER 56**NITI Aayog****ESTABLISHMENT**

On the 13th of August, 2014, the Modi Government scrapped the 65-year-old Planning Commission and announced that it would be replaced by a new body. Accordingly, on January 1, 2015, the NITI Aayog (National Institution for Transforming India) was established as the successor to the planning commission.

However, it must be noted here that the NITI Aayog, like that of the Planning Commission, was also created by an executive resolution¹ of the Government of India (i.e., Union Cabinet). Hence, it is also neither a constitutional body nor a statutory body. In other words, it is a non-constitutional or extra-constitutional body (i.e., not created by the Constitution) and a non-statutory body (not created by an Act of the Parliament).

¹Resolution of the Cabinet Secretariat vide No. 511/2/1/2015-Cab., dated the 1st of January, 2015, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 7th of January, 2015.

The NITI Aayog is the premier policy 'Think Tank' of the Government of India, providing both directional and policy inputs. While designing strategic and long-term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States.

The centre-to-state one-way flow of policy, that was the hallmark of the Planning Commission era, is now sought to be replaced by a genuine and continuing partnership of states.

In a paradigmatic shift from the command and control approach of the past, NITI Aayog accommodates diverse points of view in a collaborative, rather than confrontationist, setting. In the spirit of federalism, NITI's own policy thinking too is shaped by a 'bottom-up' approach rather than a 'top-down' model.

RATIONALE

While explaining the reason for replacing the Planning Commission with the NITI Aayog, the Union Government made the following



observation: "India has undergone a paradigm shift over the past six decades—politically, economically, socially, technologically as well as demographically. The role of Government in national development has seen a parallel evolution. Keeping with these changing times, the Government of India has decided to set up NITI Aayog (National Institution for Transforming India), in place of the erstwhile Planning Commission, as a means to better serve the needs and aspirations of the people of India."²

The new institution will be a catalyst to the developmental process; nurturing an overall enabling environment, through a holistic approach to development going beyond the limited sphere of the Public Sector and Government of India. This will be built on the foundations of:³

1. An empowered role of States as equal partners in national development; operationalising the principle of Cooperative Federalism.
2. A knowledge hub of internal as well as external resources; serving as a repository of good governance best practices, and a Think Tank offering domain knowledge as well as strategic expertise to all levels of government.
3. A collaborative platform facilitating implementation; by monitoring progress, plugging gaps and bringing together the various ministries at the Centre and in States, in the joint pursuit of developmental goals.

In the same context, the then Union Finance Minister Arun Jaitley said: "The 65-year-old Planning Commission had become a redundant organisation. It was relevant in a command economy structure, but not any longer. India is a diversified country and its states are in various phases of economic development along with their own strengths and weaknesses. In this context, a 'one-size-fits-all' approach to economic planning is

obsolete. It cannot make India competitive in today's global economy."⁴

The Resolution observed: "Perhaps most importantly, the institution must adhere to the tenet that while incorporating positive influences from the world, no single model can be transplanted from outside into the Indian scenario. We need to find our own strategy for growth. The new institution has to zero in on what will work in and for India. It will be a Bharatiya approach to development."

COMPOSITION

The composition of the NITI Aayog is as follows:

- (a) Chairperson: The Prime Minister of India
- (b) Governing Council: It comprises the Chief Ministers of all the States, Chief Ministers of Union Territories with Legislatures (i.e., Delhi, Puducherry and Jammu and Kashmir) and Lt. Governors of other Union Territories.
- (c) Regional Councils: These are formed to address specific issues and contingencies impacting more than one state or region. These are formed for a specified tenure. These are convened by the Prime Minister and comprises of the Chief Ministers of States and Lt. Governors of Union Territories in the region. These are chaired by the Chairperson of the NITI Aayog or his/her nominee.
- (d) Special Invitees: Experts, specialists and practitioners with relevant domain knowledge as special invitees nominated by the Prime Minister.
- (e) Full-time Organisational Framework: It comprises, in addition to the Prime Minister as the Chairperson:
 - (i) Vice-Chairperson: He/she is appointed by the Prime Minister. He/she enjoys the rank of a Cabinet Minister.
 - (ii) Full-time Members: They enjoy the rank of a Minister of State.

²Government of India document on NITI Aayog entitled as "From Planning to NITI—Transforming India's Development Agenda", dated February 8, 2015.

³*Ibid.*

⁴"We will use every provision in the Constitution to push reforms", OPEN Magazine, January 9, 2015.



- (iii) Part-time Members: Maximum of 2, from leading universities, research organisations and other relevant institutions in an ex-officio capacity. Part-time members would be on a rotation.
- (iv) Ex-Officio Members: Maximum of 4 members of the Union Council of Ministers to be nominated by the Prime Minister.
- (v) Chief Executive Officer: He/she is appointed by the Prime Minister for a fixed tenure, in the rank of Secretary to the Government of India.
- (vi) Secretariat: As deemed necessary.

OBJECTIVES

The objectives of the NITI Aayog are mentioned below:

1. To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States.
2. To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognising that strong States make a strong nation.
3. To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
4. To ensure, on areas that are specifically referred to it, that the interests of national security are incorporated in economic strategy and policy.
5. To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.
6. To design strategic and long-term policy and programme frameworks and initiatives, and monitor their progress and their efficacy. The lessons learnt through monitoring and feedback will be used for making innovative

improvements, including necessary mid-course corrections.

7. To provide advice and encourage partnerships between key stakeholders and national and international like-minded think tanks, as well as educational and policy research institutions.
8. To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.
9. To offer a platform for the resolution of inter-sectoral and inter-departmental issues in order to accelerate the implementation of the development agenda.
10. To maintain a State-of-the-Art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stakeholders.
11. To actively monitor and evaluate the implementation of programmes and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.
12. To focus on technology upgradation and capacity building for the implementation of programmes and initiatives.
13. To undertake other activities as may be necessary in order to further the execution of the national development agenda, and the objectives mentioned above.

FUNCTIONS

The NITI Aayog's entire gamut of activities is divided into two main hubs: Team India and Knowledge and Innovation. The two hubs are at the core of NITI Aayog's efficient functioning. The Team India Hub carries out the mandate of fostering cooperative federalism and designing policy and programme frameworks. It provides requisite coordination and support in NITI Aayog's engagement with States. The Knowledge and Innovation Hub maintains a

state-of-the-art resource centre, a repository of research on good governance and best practices, provides advice and encourages partnerships with key stakeholders, including colleges, universities, think tanks and non-governmental organizations at home and abroad.⁵

The various functions performed by the NITI Aayog can be divided into four main heads:

1. Policy and programme framework
2. Co-operative and competitive federalism
3. Monitoring and evaluation
4. Think-tank, Knowledge and Innovation Hub

The NITI Aayog is functionally divided into various verticals/cells, which are responsible for examining and looking into sectoral issues and priorities for national development and economic growth.

The different verticals/cells of NITI Aayog provide the requisite co-ordination and support framework for NITI Aayog to carry out its mandate. The list of verticals/cells is as follows⁶:

1. Administration and Support Units
2. Agriculture and Allied Sectors
3. Aspirational Districts Programme Cell
4. Communication and Social Media Cell
5. Data Management and Analysis, and Frontier Technologies
6. Economics and Finance Cell
7. Education
8. Governance and Research
9. Governing Council Secretariat and Coordination
10. Industry-I
11. Industry-II
12. Infrastructure-Connectivity
13. Infrastructure-Energy
14. Micro, Small and Medium Enterprises
15. Natural Resources and Environment, and Island Development
16. Project Appraisal and Management Division

⁵This information has been obtained from the official website of the NITI Aayog, Government of India.

⁶Annual Report 2022-23, NITI Aayog, Government of India, p. 7.

17. Public-Private Partnership
18. Rural Development
19. Science and Technology
20. Social Justice and Empowerment, and Voluntary Action Cell
21. Social Sector-I (Skill Development, Labour and Employment, and Urban Development)
22. Social Sector-II (Health and Nutrition, and Women and Child Development)
23. State Finances and Coordination
24. Sustainable Development Goals
25. Water and Land Resources

GUIDING PRINCIPLES

In carrying out the above functions, the NITI Aayog is guided by the following principles⁷:

1. *Antyodaya*: Prioritise service and uplift of the poor, marginalised and downtrodden, as enunciated in Pandit Deendayal Upadhyay's idea of 'Antyodaya'.
2. *Inclusion*: Empower vulnerable and marginalised sections, redressing identity-based inequalities of all kinds—gender, region, religion, caste or class.
3. *Village*: Integrate our villages into the development process, to draw on the vitality and energy of the bedrock of our ethos, culture and sustenance.
4. *Demographic dividend*: Harness our greatest asset, the people of India; by focussing on their development, through education and skilling, and their empowerment, through productive livelihood opportunities.
5. *People's Participation*: Transform the developmental process into a people-driven one, making an awakened and participative citizenry—the driver of good governance.
6. *Governance*: Nurture an open, transparent, accountable, pro-active and purposeful style of governance, transitioning focus from Outlay to Output to Outcome.

⁷Government of India document on NITI Aayog entitled as "From Planning to NITI—Transforming India's Development Agenda", dated February 8, 2015.

7. *Sustainability*: Maintain sustainability at the core of our planning and developmental process, building on our ancient tradition of respect for the environment.

Therefore, the NITI Aayog is based on the following seven pillars of effective governance:

- (i) Pro-people agenda that fulfils the aspirations of the society as well as individuals.
- (ii) Pro-active in anticipating and responding to citizen needs.
- (iii) Participative, by involvement of citizens.
- (iv) Empowering women in all aspects.
- (v) Inclusion of all groups with special attention to the SCs, STs, OBCs and minorities.
- (vi) Equality of opportunity for the youth.
- (vii) Transparency through the use of technology to make government visible and responsive.

Through its commitment to a cooperative federalism, promotion of citizen engagement, egalitarian access to opportunity, participative and adaptive governance and increasing use of technology, the NITI Aayog seeks to provide a critical directional and strategic input into the development process. This, along with being the incubator of ideas for development, is the core mission of NITI Aayog.

COOPERATIVE FEDERALISM⁸

The NITI Aayog has been constituted to actualise the important goal of cooperative federalism and to enable good governance in India. On the premise that strong states make a strong nation, NITI Aayog acts as the quintessential platform for the Government of India by bringing States together as 'Team India' to work towards the national development agenda.

In view of this, a number of steps have been taken by NITI Aayog to foster cooperative federalism through structured support initiatives and engagement with the States/UTs on a continuous basis. These include:

1. Meetings between the Prime Minister/Cabinet Ministers and all Chief Ministers;

2. Subgroups of Chief Ministers on subjects of national importance;
3. Sharing of best practices;
4. Policy support and capacity development of State/UT functionaries;
5. Launching of the Aspirational Districts Programme for development of backward districts;
6. Theme-based extensive engagements in various sectors;
7. Framing model laws for land leasing and agriculture marketing reforms; and
8. Area-specific interventions for the North-Eastern and Himalayan States and island development.

The NITI Aayog has been providing relevant technical advice to the Centre, States and UTs. It has also established models and programmes for the development of infrastructure and to reignite and establish private-public partnership, such as the Centre-state partnership model Development Support Services to States and Union Territories (DSSS); and the Sustainable Action for Transforming Human Capital (SATH) programme.

COMPETITIVE FEDERALISM⁹

The NITI Aayog endeavours to promote competitive federalism by facilitating improved performance of States/UTs. It encourages healthy competition among states through transparent rankings, in various sectors, along with a hand-holding approach. Some of the indices launched by NITI Aayog are School Education Quality Index, State Health Index, Composite Water Management Index, Sustainable Development Goals Index, India Innovation Index and Export Competitiveness Index. The NITI Aayog also releases delta rankings for the performance of Aspirational Districts every month.

The ranking of States in various social sectors based on quantitative objective criteria encourages them, and even districts, to improve their performance. The NITI Aayog

⁸This information has been obtained from the official website of the NITI Aayog, Government of India.

⁹*Ibid.*



works closely with all stakeholders, including the State/UT Governments, concerned Ministries/Departments in developing indicator frameworks, review mechanisms and capacity-building.

AUTONOMOUS AND ATTACHED BODIES

The NITI Aayog is supported by an autonomous body i.e., the National Institute of Labor Economics Research and Development and an attached office i.e., the Development Monitoring and Evaluation Organisation. These are explained below:

1. National Institute of Labour Economics Research and Development¹⁰ The National Institute of Labour Economics Research and Development (NILERD) was formerly known as the Institute of Applied Manpower Research (IAMR). It is a central autonomous organization under the NITI Aayog. Its primary objectives are research, data collection, education and training in all aspects of human capital planning, human resource development, and monitoring and evaluation.

The IAMR was established in 1962 under the Societies Registration Act of 1860 as an institution that would function as a clearing-house of ideas and undertake policy research on human capital development to inform perspective planning and promote policy integration.

The IAMR has been renamed as NILERD in 2014. The NILERD is mainly funded by grants-in-aid from the NITI Aayog (formerly Planning Commission), and supplemented by its own revenue from contracted research projects, and education and training activities.

The Institute moved to its own campus at Narela in 2002. Narela is a developing urban and institutional hub declared as a special economic zone for knowledge in the National Capital Region.

¹⁰This information has been obtained from the official website of the National Institute of Labour Economics Research and Development.

2. Development Monitoring and Evaluation Office¹¹: The need for an efficient and independent evaluation mechanism in India was recognized by the planners and policy-makers right from the introduction of planning process in the country and resultantly, the Programme Evaluation Organization was established by the Government in 1952 to carry out independent and objective impact evaluation of the Central Government funded programmes.

In an effort to accord more functional autonomy to the programme evaluation mechanism in the country, the Government established the Independent Evaluation Office in 2010.

The Development Monitoring and Evaluation Office (DMEO) was established by the Government in 2015 as an attached office of the NITI Aayog by merging the erstwhile Programme Evaluation Organization and the Independent Evaluation Office.

As the apex monitoring and evaluation office in the country, the DMEO supports the Government to achieve the national development agenda through monitoring and evaluation of government policies and programs. Since its inception in 2015, the office aims to support rigorous, data-driven, citizen-centric, and outcomes-driven program management and policymaking.

The DMEO's mandate involves:

- (i) Monitoring progress and efficacy of strategic and long-term policy and program frameworks and initiatives to help innovative improvements, including necessary mid-course corrections; and
- (ii) Actively monitoring and evaluating the implementation of programs and initiatives, including the identification of the needed resources so as to strengthen the probability of success and scope of delivery.

The DMEO's mandate also expands to technical advisory to States, under NITI Aayog's mandate of cooperative and competitive

¹¹This information has been obtained from the official website of the Development Monitoring and Evaluation Office.

federalism. It's institutional positioning gives the organization convening power to create a platform for monitoring and evaluation advancement in the country.

The Headquarters of DMEO is in NITI Aayog, New Delhi. Till 2017, the DMEO had 15 Regional Offices known as Regional Development Monitoring and Evaluation Offices (RDMEOs). The RDMEOs conducted field surveys and data/information collection work for evaluation studies, and they also played an important role in promoting cooperative federalism by their interaction with the States and UT administrations. However, keeping in view the changed functional requirements, they were closed in 2017 and the staff were transferred to DMEO Headquarters in New Delhi.

ERSTWHILE PLANNING COMMISSION

The erstwhile Planning Commission was established in March 1950 by an executive resolution of the Government of India, (i.e., the Union Cabinet) on the recommendation of the Advisory Planning Board constituted in 1946, under the chairmanship of K.C. Neogi. Thus, the erstwhile Planning Commission was neither a constitutional body nor a statutory body. In India, it was the supreme organ of planning for social and economic development.

Functions The functions of the erstwhile Planning Commission included the following:

1. To make an assessment of material, capital and human resources of the country, and investigate the possibilities of augmenting them.
2. To formulate a plan for the most effective and balanced utilisation of the country's resources.
3. To determine priorities and to define the stages in which the plan should be carried out.
4. To indicate the factors that retard economic development.
5. To determine the nature of the machinery required for successful implementation of the plan in each stage.

6. To appraise, from time to time, the progress achieved in execution of the plan and to recommend necessary adjustments.
7. To make appropriate recommendations for facilitating the discharge of its duties, or on a matter referred to it for advice by Central or state governments.

It should be noted that the erstwhile Planning Commission was only a staff agency—an advisory body and had no executive responsibility. It was not responsible for taking and implementing decisions. This responsibility rested with the Central and State Governments.

Composition The following points can be noted in context of the composition (membership) of the erstwhile Planning Commission:

1. The Prime Minister of India was the chairman of the commission. He/she presided over the meetings of the commission.
2. The commission had a deputy chairman. He/she was the de facto executive head (i.e., full-time functional head) of the commission.
3. Some Central Ministers were appointed as part-time members of the commission.
4. The commission had four to seven full-time expert members.
5. The commission had a member-secretary.

The state governments were not represented in the commission in any way. Thus, the erstwhile Planning Commission was wholly a Centre-constituted body.

Critical Evaluation The erstwhile Planning Commission was originally established as a staff agency with advisory role but in the course of time it had emerged as a powerful and directive authority whereby its recommendations were considered both by the Union and states. The critics had described it as a 'Super Cabinet', an 'Economic Cabinet', a 'Parallel Cabinet', the 'Fifth Wheel of the Coach' and so on.

The following observations were made on the domineering role played by the erstwhile Planning Commission.

1. **First Administrative Reforms Commission (ARC) of India:** The ARC observed: 'Under the Constitution, the ministers,



whether in the Centre or the states, are in effect, the ultimate executive authorities. Unfortunately, the Planning Commission has, in some measures, earned the reputation of being a Parallel Cabinet and sometimes, a Super Cabinet.¹²

2. **K. Santhanam:** This eminent constitutional expert stated that, 'Planning has superseded the federation and our country is functioning like a unitary system in many respects'.¹³
3. **P.V. Rajamannar:** This Chairman of the Fourth Finance Commission observed that there was an overlapping of functions and responsibilities between the erstwhile Planning Commission and Finance Commission in federal fiscal transfers.¹⁴

NATIONAL DEVELOPMENT COUNCIL

On the 1st of January, 2016, it was reported¹⁵ that the Modi government is also going to abolish the National Development Council (NDC) and transfer its powers to the Governing Council of the NITI Aayog. However, till now such a resolution has not been passed.

It must also be noted here that the last meeting (57th) of the NDC was held on the 27th of December, 2012 to approve the 12th Plan (2012–2017).

The NDC was established in August 1952 by an executive resolution of the Government of India on the recommendation of the First Five

Year Plan (draft outline). Like the erstwhile Planning Commission, it is neither a constitutional body nor a statutory body.

Composition The NDC is composed of the following members.

1. The Prime Minister of India (as its chairman/head).
2. All Union Cabinet Ministers (since 1967).
3. The Chief Ministers of all the states.
4. The Chief Ministers/administrators of all union territories.
5. Members of the Planning Commission (now NITI Aayog).

Objectives The NDC was established with the following objectives.

1. To secure cooperation of states in the execution of the Plan.
2. To strengthen and mobilise the efforts and resources of the nation in support of the Plan.
3. To promote common economic policies in all vital spheres.
4. To ensure balanced and rapid development of all parts of the country.

Functions To realise the above objectives, the NDC is assigned with the following functions:

1. To prescribe guidelines for preparation of the national Plan.
2. To consider the national Plan as prepared by the Planning Commission (now NITI Aayog).
3. To make an assessment of the resources required for implementing the Plan and to suggest measures for augmenting them.
4. To consider important questions of social and economic policy affecting national development.
5. To review the working of the national Plan from time to time.
6. To recommend measures for achievement of the aims and targets set out in the national Plan.

¹²Interim Report on the Machinery for Planning, 1967, Para 15.

¹³K. Santhanam, *Union-State Relations in India*, Asia Publishing House, 1960, p. 70.

¹⁴Report of the Fourth Finance Commission, New Delhi, Government of India, 1965, pp. 88–90.

¹⁵"NDC to be scrapped, NITI Aayog council likely to get its powers", *The Hindu*, dated January 1, 2016.

CHAPTER 57

National Human Rights Commission

ESTABLISHMENT

The National Human Rights Commission is a statutory (and not a constitutional) body. It was established in 1993 under a legislation enacted by the Parliament, namely, the Protection of Human Rights Act, 1993.

The commission is the watchdog of human rights in the country, that is, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants¹ and enforceable by courts in India.

The specific objectives of the establishment of the commission are²:

- (a) To strengthen the institutional arrangements through which human rights issues could be addressed in their entirety in a more focussed manner;
- (b) To look into allegations of excesses, independently of the government, in a manner that would underline the government's commitment to protect human rights; and

¹'International covenants' means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966 and such other Covenant or Convention adopted by the General Assembly of the UN as the Central Government may specify. The Indian government acceded to these two International Covenants on April 10, 1979.

²T.K. Thommen, 'Human Rights Commission', Cochin University Law Review, Vol. XVII, nos. 1 and 2, March-June 1993, pp. 67-68.

- (c) To complement and strengthen the efforts that have already been made in this direction.

COMPOSITION

The commission is a multi-member body consisting of a chairperson and five members. The chairperson should be a retired chief justice of India or a judge of the Supreme Court and members should be a serving or retired judge of the Supreme Court, a serving or retired chief justice of a high court and three persons (out of which atleast one should be a woman) having knowledge or practical experience with respect to human rights. In addition to these full-time members, the commission also has seven ex-officio members—the chairpersons of the National Commission for Minorities, the National Commission for SCs, the National Commission for STs, the National Commission for Women, the National Commission for BCs and the National Commission for Protection of Child Rights and the Chief Commissioner for Persons with Disabilities.

The chairperson and members are appointed by the President on the recommendations of a six-member committee consisting of the prime minister as its head, the Speaker of the Lok Sabha, the Deputy Chairman of the Rajya Sabha, leaders of the Opposition in both the Houses of Parliament and the Central home minister. Further, a sitting judge of the Supreme Court or a sitting chief justice of a high court can be appointed



only after consultation with the chief justice of India.

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the chairperson and members are not eligible for further employment under the Central or a state government.

The President can remove the chairperson or any member from the office under the following circumstances:

- (a) If he/she is adjudged insolvent; or
- (b) If he/she engages, during his/her term of office, in any paid employment outside the duties of his/her office; or
- (c) If he/she is unfit to continue in office by reason of the infirmity of mind or body; or
- (d) If he/she is of unsound mind and stands so declared by a competent court; or
- (e) If he/she is convicted and sentenced to imprisonment for an offence.

In addition to these, the President can also remove the chairperson or any member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

The salaries, allowances and other conditions of service of the chairperson or a member are determined by the Central government. But, they cannot be varied to his/her disadvantage after his/her appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS

The functions of the Commission are:

- (a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- (b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- (c) To visit jails and detention places to study the living conditions of inmates and make recommendations thereon.
- (d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- (e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- (f) To study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- (g) To undertake and promote research in the field of human rights.
- (h) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- (i) To encourage the efforts of non-governmental organisations (NGOs) working in the field of human rights.
- (j) To undertake such other functions as it may consider necessary for the promotion of human rights.

In pursuit of its primary goal of protection and promotion of human rights, the commission has been making concerted efforts at enhancing awareness about human rights in the country. In this task, the commission has been receiving full support both from civil society/NGOs/human rights activists and the media. The camp sittings and open hearings organized by the commission in different parts of the country, to provide justice at the doorsteps of the victims of the human rights violations have proved to be of immensely useful.^{2a}

The complaints received by the commission cover a wide range of issues such as alleged human rights violations due to negligence by public servants in the prevention

^{2a} Annual Report 2019–20, National Human Rights Commission, Government of India, p. 16.



of such violations, alleged custodial deaths, torture, fake encounters, police highhandedness, violations committed by security forces, conditions relating to prisons, atrocities committed on women and children and other vulnerable sections, communal violence, bonded and child labour, non-payment of retiral benefits, negligence by public authorities and atrocities on Scheduled Castes/Scheduled Tribes etc. The commission also took cognizance of the intimations received regarding deaths in police encounters and police custody, judicial custody and in the custody of defence/paramilitary forces. The suo motu cognizance of many incidents based on reports in print and electronic media was taken including those cases which came to the notice of Chairperson, Members, Special Rapporteurs and senior officers of the commission during their visits to different parts of the country.^{2b}

WORKING

The commission's headquarters is in Delhi and it can also establish offices in other places in India. It is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the Central and state governments or any other authority subordinate thereto.

The commission has its own nucleus of investigating staff for investigation into complaints of human rights violations. Besides, it is empowered to utilise the services of any officer or investigation agency of the Central government or any state government for the purpose. It has also established effective cooperation with the NGOs with first-hand information about human rights violations.

The commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it

can look into a matter within one year of its occurrence.

The commission may take any of the following steps during or upon the completion of an inquiry:

- (a) it may recommend to the concerned government or authority to make payment of compensation or damages to the victim;
- (b) it may recommend to the concerned government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- (c) it may recommend to the concerned government or authority for the grant of immediate interim relief to the victim;
- (d) it may approach the Supreme Court or the high court concerned for the necessary directions, orders or writs.

ROLE

From the above, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the concerned government or authority. But, it should be informed about the action taken on its recommendations within one month. In this context, a former member of the Commission observed³: 'The government cannot wash away the recommendations made by the Commission. The commission's role may be recommendatory, advisory, yet the Government considers the cases forwarded by it. It is, therefore, improper to say that the commission is powerless. It enjoys great material authority and no government can ignore its recommendation'.

Moreover, the commission has a limited role, powers and jurisdiction with respect to the violation of human rights by the members

^{2b} *Ibid.*

³ Justice V.S. Malimath, 'Role of Human Rights Commission', Human Rights in India: Problems and Perspectives, B.P. Singh Sehgal (ed.), Deep Publications, 1995, pp. 17-20.



of the armed forces⁴. In this sphere, the commission may seek a report from the Central government and make its recommendations. The Central government should inform the Commission of the action taken on the recommendations within three months.

The commission submits its annual or special reports to the Central government and to the state government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the commission and the reasons for non-acceptance of any of such recommendations.

PROBLEMS

The commission itself identified the various problems faced by it in its effective functioning and explained them in the following way⁵:

1. Administrative Constraints: The commission is compliant with Paris Principles which states that "the National Human Rights Institutions shall have an infrastructure which is suited for the smooth conduct of its activities, in particular adequate funding and staff. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not to be subject to financial control which might affect its independence from the perspective of human rights".

The role of the commission is expanding day by day and it is handling more or less one lakh complaints every year reflecting the growing trust reposed by the citizens of India. This necessitates devolution of powers to the Chairperson

of the commission in administrative as well as financial matters.

2. Financial Constraints: The commission receives grants-in-aid every year from the Government of India, Ministry of Home Affairs. It may spend such sums as it thinks fit for performing its functions and such sums shall be treated as expenditure payable out of these grants. With this financial independence, the commission functions efficiently to fulfil its mandate. However, the commission wishes to have financial autonomy to purchase vehicles as the same has not been delegated.

3. Manpower Constraints: Since its inception, the commission has never had the full sanctioned strength as compared to the available strength. As a result, due to voluminous complaints, it is compelled to engage retired Government officers as consultants on a contract basis.

The commission struggles to cope up with the expectations of the victims of human rights violations throughout the country and is unable to fulfil its mandate of protecting and promoting human rights. It requires creation of various posts for effectively and efficiently discharging its mandate. Shortage of experienced investigating officers who are required to be provided by the Government, affected to some extent conducting spot enquiries on custodial deaths, torture, illegal detentions etc. for which sufficient number of experienced staff are required.

The Law Division, which is the backbone of the commission, also faces a lot of problems in performing its pivotal role in handling/disposing of a large number of complaints due to shortage of manpower.

In 2017, the Supreme Court expressed its concern over the shortage of manpower in the commission and directed the Government of India to take note of the concerns of the commission and remedy them at the earliest with a positive outlook.

⁴Under the Protection of Human Rights Act (1993), the 'armed forces' means the naval, military and air forces and includes any other armed forces of the Union.

⁵Annual Report 2019–20, National Human Rights Commission, Government of India, pp. 233–234.

CHAPTER 58

State Human Rights Commission

ESTABLISHMENT

The Protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights Commission but also a State Human Rights Commission at the state level. Accordingly, a State Human Rights Commission may be constituted by the state government¹.

A State Human Rights Commission can inquire into violation of human rights only in respect of subjects mentioned in the State List (List-II) and the Concurrent List (List-III) of the Seventh Schedule of the Constitution. However, if any such case is already being inquired into by the National Human Rights Commission or any other Statutory Commission, then the State Human Rights Commission does not inquire into that case.

The central government may confer upon the State Human Rights Commissions, the functions relating to human rights in the union territories, except the union Jammu and Kashmir², and Ladakh³. The functions relating to human rights in case of union territories of Delhi, are to be dealt with by the National Human Rights Commission.

¹The Headquarters of the State Human Rights Commission shall be at such place as the state government may, by notification, specify.

²Vide the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020.

³Vide the Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020.

COMPOSITION

The State Human Rights Commission is a multi-member body consisting of a chairperson and two members. The chairperson should be a retired Chief Justice or a Judge of a High Court and members should be a serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years experience as District Judge and a person having knowledge or practical experience with respect to human rights.

The chairperson and members are appointed by the Governor on the recommendations of a committee consisting of the chief minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. In the case of a state having Legislative Council, the chairman of the Council and the leader of the opposition in the Council would also be the members of the committee. Further, a sitting judge of a High Court or a sitting District Judge can be appointed only after consultation with the Chief Justice of the High Court of the concerned state.

The chairperson and members hold office for a term of three years or until they attain the age of 70 years, whichever is earlier. They are eligible for re-appointment. After their tenure, the chairperson and members are not eligible for further employment under a state government or the Central government.

Although the chairperson and members of a State Human Rights Commission are appointed by the governor, they can be removed only by the President (and not by



the governor). The President can remove them on the same grounds and in the same manner as he/she can remove the chairperson or a member of the National Human Rights Commission. Thus, he/she can remove the chairperson or a member under the following circumstances:

- (a) If he/she is adjudged an insolvent; or
- (b) If he/she engages, during his/her term of office, in any paid employment outside the duties of his/her office; or
- (c) If he/she is unfit to continue in office by reason of infirmity of mind or body; or
- (d) If he/she is of unsound mind and stands so declared by a competent court; or
- (e) If he/she is convicted and sentenced to imprisonment for an offence.

In addition to these, the President can also remove the chairperson or a member on the ground of proved misbehaviour or incapacity. However, in these cases, the President has to refer the matter to the Supreme Court for an inquiry. If the Supreme Court, after the inquiry, upholds the cause of removal and advises so, then the President can remove the chairperson or a member.

The salaries, allowances and other conditions of service of the chairperson or a member are determined by the state government. But, they cannot be varied to his/her disadvantage after his/her appointment.

All the above provisions are aimed at securing autonomy, independence and impartiality in the functioning of the Commission.

FUNCTIONS

The functions of the Commission are:

- (a) To inquire into any violation of human rights or negligence in the prevention of such violation by a public servant, either *suo motu* or on a petition presented to it or on an order of a court.
- (b) To intervene in any proceeding involving allegation of violation of human rights pending before a court.
- (c) To visit jails and detention places to study the living conditions of inmates and make recommendation thereon.
- (d) To review the constitutional and other legal safeguards for the protection of human rights and recommend measures for their effective implementation.
- (e) To review the factors including acts of terrorism that inhibit the enjoyment of human rights and recommend remedial measures.
- (f) To undertake and promote research in the field of human rights.
- (g) To spread human rights literacy among the people and promote awareness of the safeguards available for the protection of these rights.
- (h) To encourage the efforts of non-governmental organizations (NGOs) working in the field of human rights.
- (i) To undertake such other functions as it may consider necessary for the promotion of human rights.

WORKING

The Commission is vested with the power to regulate its own procedure. It has all the powers of a civil court and its proceedings have a judicial character. It may call for information or report from the state government or any other authority subordinate thereto.

The Commission is not empowered to inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed. In other words, it can look into a matter within one year of its occurrence.

The Commission may take any of the following steps during or upon the completion of an inquiry:

- (a) It may recommend to the state government or authority to make payment of compensation or damages to the victim;
- (b) It may recommend to the state government or authority the initiation of proceedings for prosecution or any other action against the guilty public servant;
- (c) It may recommend to the state government or authority for the grant of immediate interim relief to the victim;

- (d) It may approach the Supreme Court or the state high court for the necessary directions, orders or writs.

From the above points, it is clear that the functions of the commission are mainly recommendatory in nature. It has no power to punish the violators of human rights, nor to award any relief including monetary relief to the victim. Notably, its recommendations are not binding on the state government or authority. But, it should be informed about the action taken on its recommendations within one month.

The Commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations⁴.

HUMAN RIGHTS COURTS

The Protection of Human Rights Act (1993) also provides for the establishment of Human Rights Court in every district for the speedy trial of violation of human rights.

These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state.

For every Human Rights Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor for the purpose of conducting cases in that court.

2019 AMENDMENT ACT

The various provisions or features of the Protection of Human Rights (Amendment) Act, 2019, are as follows:

1. It provided that a person who has been a judge of the Supreme Court is also made eligible to be appointed as Chairperson of the National Human

Rights Commission (in addition to the person who has been the Chief Justice of India).

2. It increased the number of members of the National Human Rights Commission (who are to be appointed from amongst persons having knowledge or practical experience with respect to human rights) from two to three out of which at least one has to be a woman.
3. It made the chairpersons of the National Commission for BCs and the National Commission for Protection of Child Rights as well as the Chief Commissioner for Persons with Disabilities as the ex-officio members of the National Human Rights Commission.
4. It reduced the term of the chairperson and members of the National Human Rights Commission as well as the State Human Rights Commission from five to three years. It also made them eligible for re-appointment.
5. It provided that a person who has been a judge of a High Court is also made eligible to be appointed as Chairperson of the State Human Rights Commission (in addition to the person who has been the Chief Justice of a High Court).
6. It provided that the central government may confer upon the State Human Rights Commissions, the functions relating to human rights in the union territories, except the union territory of Delhi. The functions relating to human rights in case of union territory of Delhi are to be dealt with by the National Human Rights Commission.
7. It provided that the Secretary-General of the National Human Rights Commission shall exercise all administrative and financial powers (except judicial functions and the power to make regulations), subject to control of the chairperson.
8. It provided that the Secretary of the State Human Rights Commission shall exercise all administrative and financial powers of the Commission, subject to control of the chairperson.

⁴Before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

CHAPTER 59 National Commission for Women

ESTABLISHMENT

The Committee on Status of Women in India (set up by the Government of India), in 1974, recommended the constitution of a National Commission for Women to fulfil the surveillance functions and to facilitate redressal of grievances and accelerate the socio-economic development of women. Again, the successive women-related committees, commissions and plans including the National Perspective Plan for Women (1988) have also recommended the constitution of such an apex body for women. Accordingly, the National Commission for Women was constituted in 1992 for protecting, promoting and safeguarding the interests and rights of women.

The Commission is an autonomous statutory (and not a constitutional) body. It was established under a legislation enacted by the Parliament, namely the National Commission for Women Act, 1990.¹ The Ministry of Women and Child Development of the Government of India is the nodal ministry for the Commission.²

The Commission has a wide mandate covering almost all aspects of women's development and empowerment. Its specific objectives are as follows:

1. To review the constitutional and legal safeguards for women
2. To recommend remedial legislative measures
3. To facilitate the redressal of grievances
4. To advise the government on all policy matters affecting women

COMPOSITION

The Commission is a multi-member body consisting of a chairperson, five members and a member-secretary. The chairperson should be someone who is committed to the cause of women. The five members should be from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or an organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare. However, at least one member each should belong to the Scheduled Castes and Scheduled Tribes, respectively.

The member-secretary should be (i) an expert in the field of management, organisational structure or sociological movement, or (ii) an officer who is a member of a Civil Service of the Union or an All-India Service or holds a civil post under the Union.

The chairperson, members and member-secretary are all nominated by the Central Government (Ministry of Women and Child Development). Their salaries, allowances and

¹This Act came into force on 31st January, 1992.

²The Department of Woman and Child Development, Government of India came into existence as a separate Ministry in 2006. Earlier, since 1985, it was a Department under the Ministry of Human Resource Development.

other service conditions are also prescribed by the Central Government.

The chairperson and members hold office for three years. However, they³ can relinquish their office at any time by addressing their resignation to the Central Government.

Further, the Central Government can also remove the chairperson or a member from the office (before the expiry of his/her term) under the following circumstances:

1. If the individual becomes an undischarged insolvent
2. If the individual gets convicted and sentenced to imprisonment for an offence which (in the opinion of the Central Government) involves moral turpitude
3. If the individual is declared of unsound mind by a competent court
4. If the individual refuses to act or becomes incapable of acting
5. If the individual absents himself/herself from three consecutive meetings of the Commission⁴
6. If the individual has abused one's official position which (in the opinion of the Central Government) renders one's continuance in the office as detrimental to the public interest

FUNCTIONS

The Commission is provided with a fourteen-point mandate.

1. To investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws
2. To present to the Central Government annually and at such other times as it may deem fit, reports upon the working of those safeguards
3. To make recommendations for the effective implementation of those safeguards

³Other than the member-secretary who is a member of a civil service of the Union or an All-India Service or holds a civil post under the Union.

⁴Without obtaining leave of absence from the Commission.

for improving the conditions of women by the Union or any state

4. To review the existing provisions of the Constitution and other laws affecting women and recommend amendments to meet any inadequacies in such laws
5. To take up the cases of violation of the provisions of the Constitution and other laws relating to women with the appropriate authorities
6. To look into complaints and take *suo moto* notice of matters relating to
 - (i) Deprivation of women's rights
 - (ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development and
 - (iii) Non-compliance of policy decisions or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women
7. To call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and to identify the constraints so as to recommend strategies for their removal
8. To undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and to identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity
9. To participate and advice on the planning process of socio-economic development of women
10. To evaluate the progress of the development of women under the Union and any state
11. To inspect any jail, remand home, women's institution or other place of



custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action

12. To fund litigation involving issues affecting a large body of women
13. To make periodical reports to the government on any matter pertaining to women and in particular various difficulties under which women toil
14. To look into any other matter referred to it by the Central Government

The Commission presents an annual report to the Central Government. It can also submit a report as and when it thinks necessary.

The Central Government places all such reports before each House of Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

If any such report is related to any matter with which any State Government is concerned, the Commission forwards a copy of such report to such State Government. The State Government places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

POWERS

The Commission can appoint the committees necessary for dealing with the special issues taken up by it from time to time. It is also empowered to co-opt as members of any such committee the persons from outside the Commission (i.e. those who are not members of the Commission). The co-opted persons can attend the meetings of the committee and take part in its proceedings but without the right to vote.

The Commission shall regulate its own procedure and also the procedure of its committees.

The Commission, while investigating any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

1. Summoning and enforcing the attendance of any person from any part of India and examining him/her on oath
2. Requiring the discovery and production of any document
3. Receiving evidence on affidavits
4. Requisitioning any public record from any court or office
5. Issuing summons for the examination of witnesses and documents and
6. Any other matter which may be prescribed by the Central Government

The Central Government should consult the Commission on all major policy matters affecting women.

WORKING^{4a}

The Commission processes the complaints received verbally or in writing. It also takes into account *suo moto* notice of cases related to women.

The complaints received by the Commission relate to various categories of crimes against women. These complaints are registered under the following 23 heads:

1. Rape/attempt to rape
2. Acid attack
3. Sexual assault
4. Sexual harassment
5. Stalking/Voyeurism
6. Trafficking/prostitution of women
7. Outraging modesty of women/Molestation
8. Cyber crimes against women
9. Police apathy against women
10. Harassment of married women/dowry harassment
11. Dowry death
12. Bigamy/Polygamy
13. Protection of women against domestic violence

^{4a}This information is obtained from the official website of the National Commission for Women.

14. Women's right of custody of children/ Divorce
15. Right to exercise choice in marriage/ Honour Crimes
16. Right to live with dignity
17. Sexual harassment of women at workplace
18. Denial of maternity benefits to women
19. Gender discrimination including equal right to education and work
20. Indecent representation of women
21. Sex Selective Abortions; Female Foeticide/ Amniocentesis
22. Traditional practices derogatory to women rights like Sati Pratha, Devdasi Pratha and Witch Hunting
23. Free legal aid for women.

The complaints are acted upon in the following manner:

1. Specific cases of police apathy are sent to the police authorities for investigation and cases are monitored.
2. Family disputes are resolved or compromises struck through counseling.
3. Disaggregated data are made available to various state authorities to facilitate action.
4. In sexual harassment complaints, the concerned organisations are urged to expedite cases and the disposal is monitored.⁵

⁵According to the landmark judgement of the Supreme Court on Sexual Harassment at Workplace delivered in the *Vishaka vs. State of Rajasthan* (1997), every employer is required to provide for effective complaints, procedures and remedies including awarding of compensation to women victims.

5. For serious crimes, the Commission constitutes an Inquiry Committee to provide immediate relief and justice to the victims of violence and atrocities.

● **PARIVARIK MAHILA LOK ADALAT^{5a}**

The Commission has evolved an innovative concept of Parivarik Mahila Lok Adalat (PMLA), which in turn supplements the efforts of the District Legal Service Authority for redressal and speedy disposal of the matters related to marriage and family affairs pending in various courts.

The Parivarik Mahila Lok Adalat functions on the model of the Lok Adalat. The Commission provides financial assistance to NGOs or State Women Commissions or State Legal Service Authority to organise the Parivarik Mahila Lok Adalat.

The objectives of Parivarik Mahila Lok Adalat are as follows:

1. To provide speedy and cost-free dispensation of justice to women
2. To generate awareness among the public regarding conciliatory mode of dispute settlement
3. To gear up the process of organising the Lok Adalats and to encourage the public to settle their disputes outside the formal set-up
4. To empower public especially women to participate in justice delivery mechanism.

^{5a}This information is obtained from the official website of the National Commission for Women.

CHAPTER 60

National Commission for Protection of Child Rights

ESTABLISHMENT

The National Commission for Protection of Child Rights is a statutory (and not a constitutional) body. It was set up in 2007 under a legislation enacted by the Parliament, namely the Commissions for Protection of Child Rights Act, 2005.¹

The Commission has to protect, promote and defend child rights in the country. Under the Act, the 'child rights' includes the children's rights adopted in the United Nations Convention on the Rights of the Child on 20 November 1989 and ratified by the Government of India on 11 December 1992. Under this Convention, a child has been defined as a human being below the age of eighteen years.

The Commission would deal with the effective implementation of laws and programmes relating to children.

The objectives of the Commission are as follows²:

1. To take cognizance and redress matters pertaining to violation of the rights of the child.
2. To ensure that all laws, policies, programmes and administrative mechanisms are in consonance with the child rights perspective as enshrined in the Constitution of India as well as the United Nations convention on the Rights of the Child.

The Commission is an autonomous body. It operates under the administrative control

of the Ministry of Women and Child Development, Government of India³.

COMPOSITION

The Commission is a multi-member body consisting of a Chairperson and six members. Out of the six members, at least two should be women.

The Chairperson should be a person of eminence who has done outstanding work for promoting the welfare of children. The six members should be from amongst persons of eminence, ability, integrity, standing and experience in the following fields:

1. Education
2. Child healthcare, welfare or child development
3. Juvenile justice or case of neglected or marginalised children or children with disabilities
4. Elimination of child labour or children in distress
5. Child psychology or sociology
6. Laws relating to children

The Chairperson and other members are appointed by the Central Government. However, the Chairperson is appointed on the recommendation of a three-member selection committee constituted by the Central Government under the Chairmanship of the minister-in-charge

¹This Act came into force on 5th February, 2007.

²Annual Report 2020-21, National Commission for Protection of Child Rights, p. 10.

³The Department of Women and Child Development, Government of India, came into existence as a separate Ministry in 2006. Earlier, since 1985, it was a Department under the Ministry of Human Resource Development.

of the Ministry or the Department of Women and Child Development.⁴

The salaries, allowances and other service conditions of the Chairperson and members are also prescribed by the Central Government. However, they cannot be varied to their disadvantage after their appointment.

The Chairperson and members hold office for a term of three years. They are not eligible for appointment for more than two terms. Further, the upper age limit for holding the office is as follows:

1. In the case of the Chairperson, it is 65 years
2. In the case of the members, it is 60 years

The Chairperson or a member can relinquish the office at any time by addressing the resignation to the Central Government.

The Central Government can remove the Chairperson from the office on the ground of proven misbehaviour or incapacity. Further, it can also remove the Chairperson or any member from the office under any of the following circumstances:

1. Adjudged as insolvent
2. Engages, during the term of office, in any paid employment outside the duties of the office
3. Refuses to act or becomes incapable of acting
4. Declared of unsound mind by a competent court
5. Abused the office which renders the continuance in the office as detrimental to the public interest
6. Convicted and sentenced to imprisonment for an offence which (in the opinion of the Central Government) involves moral turpitude
7. Absents himself/herself from three consecutive meetings of the Commission⁵.

⁴Before the Commissions for Protection of Child Rights (Amendment) Act, 2006, it was the Minister-in-charge of the Ministry of Human Resource Development.

⁵Without obtaining leave of absence from the Commission.

FUNCTIONS

The functions of the Commission are as follows:

1. To examine and review the safeguards provided by the laws for the protection of child rights and recommend measures for their effective implementation
2. To present to the Central Government, annually and at such other intervals as it may deem fit, reports upon the working of those safeguards
3. To inquire into violation of child rights and recommend initiation of proceedings in such cases
4. To examine all factors that inhibits the enjoyment of rights of children affected by terrorism, communal riots, natural disaster, domestic violence, HIV/AIDS, trafficking, exploitation and prostitution and recommend remedial measures
5. To look into matters relating to children in need of special care including children in distress, marginalised children, children in conflict with the law, juveniles, children without family and children of prisoners and recommend remedial measures
6. To study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation
7. To undertake and promote research in the field of child rights
8. To spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights
9. To inspect any juvenile custodial home or any other place of residence or institution (under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation) where children are detained or lodged for the purpose of treatment, reformation

or protection and take up with these authorities for remedial action

10. To inquire into complaints and take *suo moto* notice of matters relating to
 - (i) Deprivation and violation of child rights
 - (ii) Non-implementation of laws providing for protection and development of children
 - (iii) Non-compliance of policy decisions or instructions aimed at mitigating hardships and ensuring welfare and providing relief to children
11. To perform such other functions as it may consider necessary for the promotion of child rights

It must be noted here that the Commission is prohibited from inquiring into any matter which is pending before a State Commission for Protection of Child Rights or any other Statutory Commission.

POWERS

The Commission, while inquiring into any matter has all the powers of a civil court trying a suit and in particular in respect of the following matters:

1. Summoning and enforcing the attendance of any person and examining him/her on oath
2. Requiring the discovery and production of any document
3. Receiving evidence on affidavits
4. Requisitioning any public record from any court or office and
5. Issuing summons for the examination of witnesses or documents

WORKING

The Commission may take any of the following steps upon the completion of an inquiry:

1. It may recommend to the concerned government or authority the initiation of proceedings for prosecution or such other suitable action against the concerned person.

2. It may approach the Supreme Court or the High Court concerned for the necessary directions, orders or writs.

3. It may recommend to the concerned government or authority for the grant of necessary interim relief to the victim.

The Commission submits its annual or special reports to the Central Government and to the State Government concerned. These reports are laid before the respective legislatures, along with a memorandum of action taken on the recommendations of the Commission and the reasons for non-acceptance of any of such recommendations within one year.

FUNCTIONS UNDER OTHER ACTS

In addition to the above functions, the commission has been assigned the additional functions under three Acts relating to the children. These are as follows:

1. The Right of Children to Free and Compulsory Education (RTE) Act, 2009: According to this Act, the Commission has to perform the following functions:

- (i) To examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation
- (ii) To inquire into complaints relating to child's right to free and compulsory education
- (iii) To take necessary steps after completion of an inquiry

Further, the Commission shall, while inquiring into any matter relating to a child's right to free and compulsory education, have the same powers as assigned to it under the Commissions for the Protection of Child Rights Act, 2005.

2. The Protection of Children from the Sexual Offences (POCSO) Act, 2012: This Act makes the following provisions with respect to the additional functions of the Commission:

- (i) The Commission shall monitor the implementation of the provisions of this Act in such manner as may be prescribed.



- (ii) The Commission shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for the Protection of Child Rights Act, 2005.
- (iii) The Commission shall also include its activities under this Act in the annual report referred to in the Commissions for the Protection of Child Rights Act, 2005.

3. The Juvenile Justice (Care and Protection) Act, 2015: With regard to the additional functions of the Commission, the following provisions are contained in this Act:

- (i) The Commission shall monitor the implementation of the provisions of this Act in such manner as may be prescribed.
- (ii) The Commission shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for the Protection of Child Rights Act, 2005.
- (iii) The Commission shall also include its activities under this Act in the annual report referred to in the Commissions for the Protection of Child Rights Act, 2005.

STATE COMMISSION FOR PROTECTION OF CHILD RIGHTS

The Commissions for Protection of Child Rights Act of 2005 provides for the creation of not only the National Commission for Protection of Child Rights but also a State Commission for Protection of Child Rights at the state level. Accordingly, a state government may constitute a State Commission for Protection of Child Rights through an Official Gazette Notification.

Composition

The State Commission is a multi-member body consisting of a chairperson and six members. Out of the six members, at least two should be women.

The chairperson should be a person of eminence who has done outstanding work for promoting the welfare of children. The

six member should be from amongst persons of eminence, ability, integrity, standing and experience in the following fields:

- (i) education
- (ii) child health, care, welfare or child development
- (iii) juvenile justice or care of neglected or marginalized children or children with disabilities
- (iv) elimination of child labour or children in distress
- (v) child psychology or sociology and
- (vi) laws relating to children.

The chairperson and other members are appointed by the state government. However, the chairperson is appointed on the recommendation of a three-member selection committee constituted by the state government under the chairmanship of the Minister-in-charge of the Department dealing with children.

The salaries, allowances and other service conditions of the chairperson and members are also prescribed by the state government. However, they cannot be varied to their disadvantage after their appointment.

The chairperson and members hold office for a term of three years. They are not eligible for appointment for more than two terms. Further the upper age limit for holding the office is as follows:

- (a) in the case of the chairperson, it is 65 years; and
- (b) in the case of the members, it is 60 years.

The chairperson or a member can relinquish his/her office at any time by addressing his/her resignation to the state government.

The state government can remove the chairperson from their office on the ground of proved misbehaviour or incapacity. Further, it can also remove the chairperson or any member from their office under the following circumstances:

- (i) If he/she is adjudged an insolvent; or
- (ii) If he/she engages, during their term of office, in any paid employment outside the duties of his/her office; or
- (iii) If he/she refuses to act or becomes incapable of acting; or



- (iv) If he/she is declared of unsound mind by a competent court; or
- (v) If he/she has so abused his/her office which renders his/her continuance in the office as detrimental to the public interest; or
- (vi) If he/she is convicted and sentenced to imprisonment for an offence which (in the opinion of the state government) involves moral turpitude; or
- (vii) If he/she absents himself/herself from three consecutive meeting of the commission⁶.

Functions of the Commission

The functions of the state commission are as follows:

1. To examine and review the safeguards provided by the laws for the protection of child rights and recommend measures for their effective implementation.
2. To present to the state government, annually and at such other intervals as it may deem fit, reports upon the working of those safeguards.
3. To inquire into violation of child rights and recommend initiation of proceedings in such cases.
4. To examine all factors that inhibits the enjoyment of rights of children affected by terrorism, communal riots, natural disaster, domestic violence, HIV/AIDS, trafficking, exploitation and prostitution and recommend remedial measures.
5. To look into the matters relating to children in need of special care including children in distress, marginalized children, children in conflict with law, juveniles, children without family and children of prisoners and recommend remedial measures.
6. To study treaties and other international instruments and undertake periodical review of existing policies, programmes

and other activities on child rights and make recommendations for their effective implementation.

7. To undertake and promote research in the field of child rights.
8. To spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights.
9. To inspect any juvenile custodial home or any other place of residence or institution (under the control of the state government or any other authority, including any institution run by a social organisation) where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action.
10. To inquire into complaints and take suo-motu notice of matters relating to the following and take-up the issues arising out of these matters with appropriate authorities:
 - (i) deprivation and violation of child rights;
 - (ii) non-implementation of laws providing for protection and development of children; and
 - (iii) non-compliance of policy decisions or instructions aimed at mitigating hardships and ensuring welfare and providing relief to children.
11. To perform such other functions as it may consider necessary for the promotion of child rights.

Powers

The state commission, while inquiring into any matter, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of any person and examining him/her on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;

⁶Without obtaining leave of absence from the State Commission.



- (d) requisitioning any public record from any court or office; and
- (e) issuing summons for the examination of witnesses or documents.

Working

The state commission may take any of the following steps upon the completion of an inquiry:

- (i) It may recommend to the state government or authority the initiation of proceedings for prosecution or such other suitable action against the concerned person.
- (ii) It may approach the Supreme Court or the State High Court for the necessary directions, orders or writs.
- (iii) It may recommend to the state government or authority for the grant of necessary interim relief to the victim.

The state commission submits its annual or special reports to the state government. These reports are laid before the state legislature, along with a memorandum of action taken on the recommendations of the state commission

and the reasons for non-acceptance of any of such recommendations⁷.

CHILDREN'S COURTS

The Commissions for Protection of Child Rights Act (2005) also provides for the establishment of Children's Courts for the speedy trial of offences against children or of violation of child rights.

Thus, the state government may specify at least a court in the state or specify for each district, a Court of Session to be a Children's Court. These courts can be set up by the state government only with the concurrence of the Chief Justice of the High Court of that state.

For every Children's Court, the state government specifies a public prosecutor or appoints an advocate (who has practiced for seven years) as a special public prosecutor for the purpose of conducting cases in that court.

⁷Before each House of State Legislature where it consists of two Houses, or where such Legislature consist of one House, before that House.

CHAPTER 61 National Commission for Minorities

ESTABLISHMENT

In 1978, the Government of India *vide* an executive resolution¹, set up a Minorities Commission to safeguard the interests of the minorities. The resolution explained the reasons for the establishment of the Minorities Commission in the following way:

‘Despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the Government policies and administrative schemes enunciated from time to time’.

Later, it was felt that the Minorities Commission be given statutory status so that it may infuse confidence among the minorities about the working and the effectiveness of the Commission. It would then also carry more weight with the State Governments/Union Territory Administrations and the Ministries/

¹Resolution dated 12th January, 1978 issued by the Ministry of Home Affairs.

Departments and the other organisations of the Central Government.

With the enactment of the National Commission for Minorities Act, 1992², the Minorities Commission became a statutory body and was renamed the National Commission for Minorities. The first statutory Commission was constituted in 1993.

The Commission is an autonomous body. It works under the administrative control of the Ministry of Minority Affairs³, Government of India.

The Act does not define the term ‘minority’, but enables the Central Government to notify ‘minorities’ for the purposes of the Act. Accordingly, the Centre in 1993 notified five religious communities, *viz.* Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as minority communities. In 2014, the Jain community was added to this list.⁴

COMPOSITION

The Commission is a multi-member body consisting of a Chairperson, a Vice-Chairperson and five members.⁵ They are nominated

²This Act came into force on 17th May, 1993.

³The Ministry of Minority Affairs was carved out of the Ministry of Social Justice & Empowerment in 2006.

⁴Notification dated 27th January, 2014 issued by the Ministry of Minority Affairs.

⁵Before the National Commission for Minorities (Amendment) Act, 1995, the Commission consisted of a Chairperson and six members.

by the Central Government from amongst persons of eminence, ability and integrity. However, five members including the Chairperson should be from amongst the minority communities.

The salaries, allowances and other service conditions of the Chairman and members are also prescribed by the Central Government (Ministry of Minority Affairs). Notably, members include the Vice-Chairperson.⁶

The chairperson and members hold office for a period of three years. However, they can relinquish their office at any time by addressing their resignation to the Central Government.

Further, the Central Government can also remove the Chairperson or a member from the office (before the expiry of the term) under any of the following circumstances:

1. Becomes an undischarged insolvent
2. Gets convicted and sentenced to imprisonment for an offence which (in the opinion of the Central Government) involves moral turpitude
3. Declared of unsound mind by a competent court
4. Refuses to act or becomes incapable of acting
5. Absents from three consecutive meetings of the Commission⁷
6. Abused official position that (in the opinion of the Central Government) renders continuance in the office as detrimental to the interests of minorities or the public interest

FUNCTIONS

The Commission is provided with the following nine-point mandate:

1. To evaluate the progress of the development of minorities under the Union and States
2. To monitor the working of the safeguards for minorities provided in the

⁶Added by the National Commission for Minorities (Amendment) Act, 1995.

⁷Without obtaining leave of absence from the Commission.

Constitution and in laws enacted by Parliament and the state legislatures

3. To make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments
4. To look into specific complaints regarding deprivation of rights and safeguards of minorities and take up such matters with the appropriate authorities
5. To cause studies to be undertaken into the problems arising out of any discrimination against minorities and recommend measures for their removal
6. To conduct studies, research and analysis on the issues relating to socio-economic and educational development of minorities
7. To suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments
8. To make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular the difficulties confronted by them
9. To look into any other matter referred to it by the Central Government

POWERS

The Commission, while evaluating/monitoring any matter or inquiring into any complaint, has all the powers of a civil court trying a suit and in particular in respect of the following matters:

1. Summoning and enforcing the attendance of any person from any part of India and examining him/her on oath
2. Requiring the discovery and production of any document
3. Receiving evidence on affidavits
4. Requisitioning any public record from any court or office
5. Issuing summons for the examination of witnesses and documents



6. Any other matter which may be prescribed by the Central Government

REPORT

The Commission presents an annual report to the Central Government. It can also submit a report as and when it thinks necessary.

The Central Government places all such reports before each House of Parliament, along with a memorandum explaining the action taken on the recommendations made by the Commission. The memorandum should also

contain the reasons for the non-acceptance of any of such recommendations.

If any such report is related to any matter with which any State Government is concerned, then the Commission forwards a copy of such report to such State Government. The State Government places it before the state legislature, along with a memorandum explaining the action taken on the recommendations of the Commission. The memorandum should also contain the reasons for the non-acceptance of any of such recommendations.

CHAPTER 62

Central Information Commission

The Central Information Commission was established by the Central Government in 2005. It was constituted under the provisions of the Right to Information Act (2005). Hence, it is not a constitutional body.

The Central Information Commission is a high-powered independent body which inter alia looks into the complaints made to it and decide the appeals. It entertains complaints and appeals pertaining to offices, financial institutions, public sector undertakings, etc., under the Central Government and the Union Territories.

COMPOSITION

The Commission consists of a Chief Information Commissioner and not more than ten Information Commissioners. They are appointed by the President on the recommendation of a committee consisting of the Prime Minister as Chairperson, the Leader of Opposition¹ in the Lok Sabha and a Union Cabinet Minister nominated by the Prime Minister. They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. They should not be a Member of Parliament or Member of the Legislature of any State or

Union Territory. They should not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

TENURE AND SERVICE CONDITIONS

The Chief Information Commissioner and an Information Commissioner shall hold office for such term as prescribed by the Central Government or until they attain the age of 65 years, whichever is earlier. They are not eligible for reappointment².

The President can remove the Chief Information Commissioner or any Information Commissioner from the office under the following circumstances:

- (a) if he/she is adjudged an insolvent; or
- (b) if he/she has been convicted of an offence which (in the opinion of the President) involves a moral turpitude; or
- (c) if he/she engages during his/her term of office in any paid employment outside the duties of his/her office; or
- (d) if he/she is (in the opinion of the President) unfit to continue in office due to infirmity of mind or body; or
- (e) if he/she has acquired such financial or other interest as is likely to affect prejudicially his/her official functions.

¹Where the Leader of Opposition in the Lok Sabha has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Lok Sabha shall be deemed to be the Leader of the Opposition.

²The Information Commissioner is eligible for appointment as Chief Information Commissioner but cannot hold office for more than a total of five years including his/her term as Information Commissioner.



In addition to these, the President can also remove the Chief Information Commissioner or any Information Commissioner on the ground of proved misbehaviour or incapacity³. However, in these cases, the President has to refer the matter to the Supreme Court for an enquiry. If the Supreme Court, after the enquiry, upholds the cause of removal and advises so, then the President can remove him/her.

The salary, allowances and other service conditions of the Chief Information Commissioner and an Information Commissioner shall be such as prescribed by the Central Government. But, they cannot be varied to his/her disadvantage during service.

POWERS AND FUNCTIONS

The powers and functions of the Central Information Commission are:

1. It is the duty of the Commission to receive and inquire into a complaint from any person:
 - (a) who has not been able to submit an information request because of non-appointment of a Public Information Officer;
 - (b) who has been refused information that was requested;
 - (c) who has not received response to his/her information request within the specified time limits;
 - (d) who thinks the fees charged are unreasonable;
 - (e) who thinks information given is incomplete, misleading or false; and
 - (f) any other matter relating to obtaining information.

³He/she is deemed to be guilty of misbehaviour, if he/she is concerned or interested in any contract or agreement made by the Central Government or participates in any way in the profit of such contract or agreement or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company.

2. The Commission can order inquiry into any matter if there are reasonable grounds (suo-moto power).
3. While inquiring, the Commission has the powers of a civil court in respect of the following matters:
 - (a) summoning and enforcing attendance of persons and compelling them to give oral or written evidence on oath and to produce documents or things;
 - (b) requiring the discovery and inspection of documents;
 - (c) receiving evidence on affidavit;
 - (d) requisitioning any public record from any court or office;
 - (e) issuing summons for examination of witnesses or documents; and
 - (f) any other matter which may be prescribed.
4. During the inquiry of a complaint, the Commission may examine any record which is under the control of the public authority and no such record may be withheld from it on any grounds. In other words, all public records must be given to the Commission during inquiry for examination.
5. The Commission has the power to secure compliance of its decisions from the public authority. This includes:
 - (a) providing access to information in a particular form;
 - (b) directing the public authority to appoint a Public Information Officer where none exists;
 - (c) publishing information or categories of information;
 - (d) making necessary changes to the practices relating to management, maintenance and destruction of records;
 - (e) enhancing training provision for officials on the right to information;
 - (f) seeking an annual report from the public authority on compliance with this Act;



- (g) requiring the public authority to compensate for any loss or other detriment suffered by the applicant;
- (h) imposing penalties under this Act⁴; and
- (i) rejecting the application.

⁴The Commission can impose a penalty on the Public Information Officer at the rate of ₹250 per day upto a maximum of ₹25,000. It can also recommend for disciplinary action against the errant official.

- 6. The Commission submits an annual report to the Central Government on the implementation of the provisions of this Act. The Central Government places this report before each House of Parliament.
- 7. When a public authority does not conform to the provisions of this Act, the Commission may recommend (to the authority) steps which ought to be taken for promoting such conformity.